

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	Criminal Action
	:	No. 1:17-cr-00222-LO
v.	:	
	:	
WILLIAM S. WILSON and	:	
	:	
MATTHEW KEKOA LUMHO,	:	June 23, 2021
	:	(2:09 p.m.)
	:	
Defendants.	:	
	:	
.....	:	

DAY 11 - AFTERNOON SESSION  
TRANSCRIPT OF JURY TRIAL PROCEEDINGS  
BEFORE THE HONORABLE LIAM O'GRADY, and a JURY  
UNITED STATES DISTRICT COURT JUDGE

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**AFTERNOON SESSION, JUNE 23, 2021**

(2:09 PM.)

THE COURT: All right. Anything before we get our jurors?

MR. AMOLSCH: No, sir.

THE COURT: Okay. Ira, let's get the jury, please.

(Jury in at 2:10 p.m.)

THE COURT: Please, have a seat. All right, Mr. Burke.

MR. BURKE: Thank you, Your Honor.

**CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT**

MR. BURKE: How did this happen? How did this come to pass? How did it happen that Kekoa LumHo could secretly place an order for high-end camera equipment, equipment that he had utterly no use for in his job at the DoD IG? Equipment that he ordered secretly using his personal Gmail account, sent directly to defendant Wilson's right-hand man at MSO Tech, Barry Atwood. Equipment that gets ordered through WITS, a GSA contract that is supposed to be used for telephone and Internet services and cannot legitimately be used to buy camera equipment.

An order placed nominally through a company called Level 3, a telecommunications company that doesn't manufacture or sell camera equipment, an order that is then subcontracted, not to a camera manufacturer, not to a camera store, but to Bill Wilson's company, MSO Tech, a construction firm based 750 miles away in Lake Butler, Florida, that has no experience or expertise in

1 selling or providing camera equipment? Only to have  
2 Bill Wilson's company arrange to ship all of this high-end camera  
3 equipment, not to the DoD IG, but to the personal residence of  
4 Kekoa LumHo's friend and fishing buddy, Barry Atwood.

5 And then how did it come to pass that all of this camera  
6 equipment and the other electronics you've seen in the case, get  
7 falsely billed to the government as part of various service  
8 hours, falsely billed to the government in service hours,  
9 including the service hour for 768 hours of cable installer for  
10 the inflated price of \$54,000, with LumHo himself directing the  
11 key details from the service order be deleted before he signs it.  
12 With LumHo himself authorizing and signing off on these  
13 fraudulent service orders. A service order that ensured that  
14 Bill Wilson's company would profit handsomely from this  
15 transaction, even though Bill Wilson's company added no value for  
16 the government. A service order that LumHo signed while Wilson  
17 was also making secret payments to Timothy Donelson covered up by  
18 fake invoices from a shell company called Apposite Services for  
19 the supposed use of a bulldozer that Tim Donelson didn't have and  
20 didn't own, a bulldozer that Bill Wilson owned himself and paid  
21 for with his own money.

22 Fraudulent service orders placed by LumHo while Wilson was  
23 also making secret payments to Ron Capallia, covered up by the  
24 thin false pretext of a fake job for Ron Capallia's wife, and  
25 while Wilson was also making bribe payments to Kekoa LumHo

1 covered up by an equally fake job for LumHo's father-in-law.

2 Was this an extraordinary, astonishing, series of  
3 coincidences? Was this Defendant Lumho working hard to satisfy  
4 the legitimate needs of the IT department at the DoD IG? Was  
5 this a crisis? Did they just have to buy this through WITS and  
6 through Bill Wilson's company because of Bill Wilson's security  
7 clearance? No, ladies and gentlemen, of course not. It was one  
8 reason and one reason only for this incredible sequence of  
9 events, and that was corruption.

10 Over the course of this afternoon, I'm going to walk you  
11 through the evidence that you've seen in the course of this trial  
12 over the last few weeks.

13 We're going to talk about the charges in the indictment.  
14 What you've already seen over the last few weeks has demonstrated  
15 overwhelmingly that Bill Wilson and Defendant Lumho entered into  
16 a corrupt agreement, a conspiracy to engage in fraud, to pay and  
17 receive bribes, to submit false claims to the government and then  
18 to cover it up.

19 I'm going walk you through the evidence in each of the  
20 counts. What you're going to see from the evidence that we've  
21 already presented to you, ladies and gentlemen, is that there's  
22 only one verdict consistent with the evidence in this case, and  
23 that is a verdict of guilty as to both defendants on all counts.

24 Now, ladies and gentlemen, the conspiracy in this case  
25 starts with the corrupt relationship between Bill Wilson and

1 Timothy Donelson. You heard a lot about that at the beginning of  
2 the case. And what you saw from the evidence, ladies and  
3 gentlemen, is that from 2010 through approximately 2014,  
4 construction contract after construction contract after  
5 construction contract was awarded by Tim Donelson to Bill Wilson.

6 And there are several notable characteristics of those  
7 construction contracts and the circumstances surrounding them,  
8 ladies and gentlemen, that point to the corrupt bargain. First  
9 of all, you heard from Seana Gilliland that coming from  
10 David Scotidas that from 2010 on, no one else at Level 3 awarded  
11 a construction contract to Bill Wilson. And that since  
12 Tim Donelson and Ron Capallia resigned in disgrace in 2014, no  
13 one at all at Level 3 has awarded a construction contract to  
14 Bill Wilson or either of his companies. And you're going to see,  
15 ladies and gentlemen, from the contract themselves and the  
16 summary charts -- this is 1407 -- enormous number of contracts  
17 steered by Tim Donelson to Bill Wilson in ways that don't make  
18 any business sense.

19 As you've seen, ladies and gentlemen, Bill Wilson's  
20 company was a small company with a handful of employees based in  
21 Lake Butler, Florida. It had no offices anywhere else, and yet  
22 construction contract after construction contract all over the  
23 country -- or all over the East Coast I should say -- are awarded  
24 by Tim Donelson and only by Tim Donelson to Bill Wilson's  
25 companies, Durham; Kearneysville, West Virginia; McLean,

1 Virginia; Clarksville, Virginia; Nashville; Hanscom Air Force  
2 base in Massachusetts; Philadelphia; Jacksonville; Washington,  
3 D.C., on and on and on. And what you heard, ladies and  
4 gentlemen, from David Scotidas was that many of these  
5 construction contracts were awarded without any meaningful  
6 competition at prices that didn't make any sense to him and that  
7 were so high that he immediately went and reported it once he was  
8 out from under Tim Donelson's thumb.

9 And you heard how in many instances it didn't make sense  
10 to involve Bill Wilson's company at all, because what  
11 Bill Wilson's company would do was not actually do the project,  
12 they would just subcontract the project to somebody else, a job  
13 that David Scotidas himself could have done.

14 And ladies and gentlemen, you know why, now. All the  
15 while Bill Wilson was secretly making payments to a shell entity  
16 called Apposite Services that Tim Donelson owned and controlled.  
17 And look at the timing of the payments, ladies and gentlemen.  
18 Hundreds and thousands of dollars, all from Bill Wilson to this  
19 shell entity owned by Tim Donelson at the same time Tim Donelson  
20 is awarding those same contracts to Bill Wilson's companies.

21 And not just payments to the shell entity, buying the  
22 property immediately behind Tim Donelson's residence, doubling  
23 the size of his backyard. Paying for him to buy new trucks or at  
24 least portions of the new trucks, covering it up with false  
25 information in the memo line. Buying him a custom-made dog box



1 where Bill Wilson had a matching one, and as you later heard,  
2 then seeking to conceal that once they learned that they were  
3 under investigation.

4 The bargain, the corrupt *quid pro quo* is obvious, ladies  
5 and gentlemen. And what makes it even more obvious is the  
6 relentless efforts by Bill Wilson, and Tim Donelson to cover it  
7 up with fake invoices from a company called Apposite Services.  
8 Fake invoices where Bill Wilson claimed under oath in his  
9 deposition were all for the rental of a bulldozer that he  
10 couldn't afford to buy himself and that he had to get from  
11 Tim Donelson because he just couldn't rent one, couldn't buy one  
12 on his own.

13 Ladies and gentlemen, now you know that the entire time  
14 that this -- these invoices, these fake invoices were being --  
15 for work supposedly done, Bill Wilson owned his own bulldozer.  
16 And you heard from witness after witness many of these projects  
17 reflected in these invoices didn't happen or couldn't happen or  
18 were done by Bill Wilson's own employees with his own equipment  
19 where he never would have had any legitimate reason to pay anyone  
20 else.

21 And the evidence of the corrupt bargain is even clearer,  
22 ladies and gentlemen, when you look at the money. This is  
23 government's Exhibit 1404A. And what you see, ladies and  
24 gentlemen, is the revenues and the source of the revenues to  
25 Bill Wilson's company. Bill Wilson starts paying the illegal

1 kickbacks in 2011, and watch what happens. The revenues for  
2 Level 3 all pursuant to contracts awarded by Tim Donelson, go  
3 through the roof, more than quintupling the money that his  
4 businesses are making.

5 And then, after early 2014, when Tim Donelson and  
6 Ron Capallia realize that they're under investigation and resign  
7 in disgrace, the revenues fall through the floor.

8 Ladies and gentlemen, if Bill Wilson was really earning  
9 these or believed that he could earn all this business on his  
10 own, he wouldn't have paid the kickbacks, and if it was  
11 legitimate business, the business would continue. But it didn't  
12 because it was corrupt. These were illegal kickbacks, there was  
13 a corrupt bargain between Bill Wilson and Tim Donelson, and,  
14 that, that alone, ladies and gentlemen, proves defendant Wilson  
15 guilty of Count 1.

16 Count 1 of the indictment is a conspiracy count that  
17 charges a conspiracy to commit wire fraud. And as you were  
18 instructed by Judge O'Grady and as you're going to see from the  
19 instructions when you get them in written form, is that in order  
20 to be guilty of conspiracy, there doesn't have to be a written  
21 agreement. It doesn't have to be explicit, and not all members  
22 of the conspiracy have to join at the same time or play the same  
23 role. But the evidence that I've just walked you through, ladies  
24 and gentlemen, proves overwhelmingly that Bill Wilson is guilty  
25 of that first count, conspiracy count, and here are the elements:

1 Number one, the conspiracy agreement or understanding to commit  
2 wire fraud as described in the indictment was formed, reached, or  
3 entered into by two or more persons; number two, at some time  
4 during the existence or life of the conspiracy agreement or  
5 understanding, the defendant knew the purpose of the agreement;  
6 and three, with knowledge of the purpose of the conspiracy  
7 agreement or understanding, the defendant then deliberately  
8 joined the conspiracy, agreement, or understanding.

9 Well, ladies and gentlemen, the evidence I've just  
10 described clearly demonstrates there was a corrupt bargain  
11 between Bill Wilson and Tim Donelson. But in addition, consider  
12 their actions, consider all the efforts they took to cover it up.  
13 If you have any doubt about whether or not -- what their intent  
14 was, their behavior both in carrying out the conspiracy and  
15 attempting to conceal it demonstrates that there was an  
16 agreement, that of course Bill Wilson knew the purpose of the  
17 agreement. He was the ringleader. It was all to benefit him,  
18 and that of course he joined it.

19 This is an agreement between he and Tim Donelson in those  
20 early stages. That evidence alone, before we get to the bribes  
21 to LumHo, before we get to the kickbacks to Capallia, before we  
22 get to all the false statements that he made during his  
23 deposition, during his interviews, before we get to the false  
24 service orders, that alone proves defendant Wilson guilty of  
25 Count 1.

1 But for this conspiracy to work as well as it did, for as  
2 long as it did, and for it to be as profitable as it was for all  
3 of the members of the conspiracy, Bill Wilson needed help, not  
4 just from Tim Donelson, but from key people throughout this  
5 series of contracts and subcontracts. He needed help from  
6 Ronald Capallia managing the day-to-day of the WITS contract  
7 making sure that all these fraudulent service orders kept being  
8 pushed through the WITS contract and sent down to Bill Wilson's  
9 company, despite the fact that Bill Wilson's companies had no  
10 experience or expertise in providing IT services, in selling  
11 highly specialized computer equipment or components, or even in  
12 providing office moving services.

13 He needed help from Barry Atwood to serve as a back  
14 channel for communications with Kekoa LumHo for the bribe  
15 requests for LumHo and to funnel the bribes back to LumHo after  
16 he had received the requests. And he needed Kekoa LumHo himself  
17 on the inside within the Department of Defense's Office of the  
18 Inspector General to make sure that these orders kept being  
19 placed through WITS, the one procurement option that Kekoa LumHo  
20 could control, the one procurement option that Kekoa LumHo and  
21 Bill Wilson knew necessarily would put money in Bill Wilson's  
22 pocket, the one procurement option that could not legitimately be  
23 used for many of the fraudulent service orders that you've seen  
24 in this case.

25 Unless, of course, Kekoa LumHo was willing to sign off on

1 fraudulent service orders and call these things something other  
2 than what they truly were, to disguise them and call them,  
3 "Cable Installer" or "LAN/WAN integrator" or "Master Subject  
4 Matter Expert CIO." And Wilson, Ron Capallia, and Kekoa LumHo  
5 all needed each other to falsely call these service orders  
6 something they were not, to ensure that the prices paid by Level  
7 3 and then ultimately by the government were so dramatically  
8 inflated that there would be plenty of money for Bill Wilson to  
9 make an enormous profit with more than enough left over to pay  
10 bribes to LumHo, kickbacks to Donelson, and kickbacks to  
11 Capallia. They needed each other. Everyone played a role, and  
12 for this conspiracy to work, they all had to act purposefully.

13 So let's look at that corrupt bargain between Bill Wilson  
14 and Kekoa LumHo. It starts with the fake job for Fidel Ramos,  
15 Kekoa LumHo's father-in-law. And, ladies and gentlemen, the  
16 co-conspirators knew that this was a scam from the start. Look  
17 at this employee enrollment form nominally in the name of  
18 Fidel Ramos describing Fidel Ramos as secretary assistant. You  
19 now know, ladies and gentlemen, that Fidel Ramos was illiterate.  
20 He was unemployed, he couldn't work, he couldn't possibly serve  
21 as a secretary. He never heard of MSO Tech or Bill Wilson. He  
22 never knew anything about what this job was going to entail  
23 except for whatever information Kekoa LumHo chose to tell him.

24 Defendant LumHo says somebody's going to call him, but no  
25 one ever does. And Fidel Ramos tells defendant LumHo that no one

1 calls. Defendant LumHo knows this job never comes to creation.  
2 He lives with his father-in-law. Of course he knows that the job  
3 never happened, and that it wasn't real.

4 And ladies and gentlemen, look closer at government's  
5 Exhibit 938, at Page 1. Page 1, is the employment enrollment  
6 form, again in the name of Fidel Ramos for a job that never  
7 happened, for work that was never done.

8 The evidence shows you conclusively he definitely did not  
9 fill out this form, Fidel Ramos. Because, as you've seen,  
10 Fidel Ramos was illiterate. He couldn't have filled out this  
11 form. And as you heard his testimony, Fidel Ramos doesn't know  
12 who MSO Tech is, doesn't know who Bill Wilson is, doesn't know  
13 anything about this job. So the evidence proves conclusively  
14 that this fraudulent form in the name of Fidel Ramos was not  
15 filled out by Fidel Ramos.

16 The evidence also shows, ladies and gentlemen, who did  
17 fill it out, maybe not by hand but who provided the information;  
18 and that's Kekoa LumHo. Government's Exhibit 1101 is a file that  
19 Special Agent Allison Russo found in the Outlook file of  
20 Defendant Lumho from his files at the DoD IG. And what you can  
21 see in this Outlook file, 1101, is all of the information that  
22 Kekoa LumHo would have needed to fraudulently fill out the  
23 employment enrollment form in his father-in-law's name. He knows  
24 what MSO Tech is. Fidel Ramos does not. He knows how to write.  
25 Fidel Ramos does not. He has all of Fidel Ramos information, his

1 name, his driver's license information, his date of birth, his  
2 social security number, all of the information he would need to  
3 provide that information for a fake enrollment form for a job he  
4 knows never happened.

5 So you know from this evidence that from the beginning  
6 Kekoa LumHo knew this was a sham because this could not have  
7 happened. This fraudulent enrollment documentation could not  
8 have come into existence unless Kekoa LumHo was personally  
9 involved. He was doing it and he knew that his father-in-law  
10 didn't know anything about it.

11 And not only that, ladies and gentlemen, Kekoa LumHo takes  
12 his father-in-law to the bank and as you can see from this  
13 enrollment form, he has all of his father-in-law's information,  
14 his name, his account number, his home address, his driver's  
15 license number. This is the account that you now know was used  
16 as a conduit through which to pass the bribes from Bill Wilson to  
17 Kekoa LumHo. He doesn't pick any bank, he picks a bank where  
18 he's a member so he has an excuse to take his father-in-law to a  
19 bank where he knows he's going to be able to control what  
20 happens. And it's not just any day that he takes his  
21 father-in-law to the bank.

22 Government's Exhibit 927, FedEx records from the account  
23 of Bill Wilson, MSO Tech, and what these FedEx records show you  
24 is that on February 17th, 2012, Bill Wilson caused a package to  
25 be delivered to Kekoa LumHo's house, a package that is in the

1 name of Fidel Ramos, but as you heard from his deposition  
2 testimony, Bill Wilson claims he doesn't know who Fidel Ramos is,  
3 and you know from Fidel Ramos that he's never heard or know  
4 anything about Bill Wilson or MSO Tech except what Kekoa LumHo  
5 tells him.

6 And the date is particularly important, February 17th,  
7 2012, because it is the exact same day that Kekoa LumHo takes his  
8 father-in-law to the bank. This package from Bill Wilson mailed  
9 to LumHo's home address wasn't for Fidel Ramos, and the date that  
10 Kekoa LumHo took his father-in-law to the bank wasn't a  
11 coincidence. It wasn't some goal to just do something nice for  
12 Fidel Ramos to help him open an account on that day. The timing,  
13 the circumstances, the surrounding events show you Kekoa LumHo  
14 opened this account specifically for the purpose of using it as a  
15 conduit through which to conceal the bribes. And, in fact, he  
16 controlled the account.

17 These are from the bank records from Navy Federal Credit  
18 Union. And as you can see here, a transfer, all of this money  
19 coming from Bill Wilson transferred through an account nominally  
20 in the name of Fidel Ramos, an account that would look to the  
21 outside world like it had nothing to do with someone with the  
22 last name LumHo. But an account, nevertheless, that was used to  
23 transfer money into Kekoa LumHo's own account.

24 There's a transfer on April 11th, a transfer on June 6th,  
25 a transfer on June 28th. Again, you know who didn't do those



1 transfers, Fidel Ramos, because Fidel Ramos doesn't know how to  
2 use a computer, and you know who did, Kekoa LumHo, because he  
3 controlled the account, he had all the log on information, he  
4 went to the bank with his father-in-law that day, and every penny  
5 of this money is money that originates from Bill Wilson.

6 It gets worse. May of 2012, Kekoa LumHo is now in control  
7 of the WITS contract. He has now inserted himself into the  
8 process. He has now directed Ron Capallia: Send all of the  
9 service order requests to me. He is the designated agency  
10 representative who you know through the testimony of GSA  
11 representative Tina LeBlanc, Willie Spivey, witness after  
12 witness, the designated agency representative is the person at  
13 the agency in question who's in charge of the WITS 3 contract.

14 Well before May of 2012, it's clear Kekoa LumHo controls  
15 the WITS contract. And in this context, Kekoa LumHo sends this  
16 e-mail to Timothy Donelson, May 23rd of 2012. By this point  
17 Kekoa LumHo knows that he has the power to approve or disapprove  
18 any orders submitted through WITS. He knows it, Tim Donelson  
19 knows it, Bill Wilson knows it, Barry Atwood knows it,  
20 Ron Capallia knows it. It is no secret who has the power to  
21 control what happens. And in that context he sends this e-mail  
22 to Timothy Donelson complaining that the price under WITS is just  
23 too high mentioning apropos of nothing.

24 Ron's whole seven day Disney cruise vacation with his  
25 family, including his extended family cost less than this. What

1 on earth does that have to do with IT services? And then again,  
2 apropos of nothing -- and I'll back up just a step, a Disney  
3 cruise vacation that you now know from the testimony and from the  
4 evidence and from the financial records and the invoices,  
5 Bill Wilson paid for as an illegal kickback to Ron Capallia to  
6 influence Ron Capallia's actions on the inside of Level 3. And,  
7 then again, apropos of nothing, Kekoa LumHo just happens to  
8 mention, "I'm going to Hawaii and staying at the Hilton Hawaiian  
9 Village for two weeks, staying in a two-bedroom suite, and the  
10 total cost with airfare is 14,000 and that is for six adults."

11 If the message wasn't clear enough, he then goes on to  
12 explain that if matters are not resolved to his satisfaction, he  
13 might just have to stop ordering through WITS all together. "My  
14 customers and co-workers are quickly losing their confidence in  
15 my ability to get what they need in a timely manner. What use to  
16 take a matter of weeks to get is now taking months. Everyone is  
17 just about done with me and WITS."

18 He's been receiving bribe payments through the fake  
19 pretext of his father-in-law's job for several months, but you  
20 can all see what's going on here, ladies and gentlemen. He  
21 doesn't need to say it out loud. This is nothing more than a  
22 veiled request for a bribe and the law requires nothing more.

23 From one of the instructions, "The *quid pro quo* need not  
24 be stated in express terms, for otherwise the law's effect could  
25 be frustrated by knowing winks and nods. Rather, the intent to

1 exchange may be established by circumstantial evidence, based  
2 upon the defendant's words, conduct, acts, and all the  
3 surrounding circumstances disclosed by the evidence and the  
4 rationale or logical inferences that may be drawn from them."

5 He doesn't have to say it out loud for all of you to  
6 understand exactly what he was asking for.

7 And Bill Wilson certainly got the message, because a few  
8 weeks later Bill Wilson causes the rate of pay for the  
9 non-existent job for Fidel Ramos to be increased from \$10 per  
10 non-existent hour, to \$50 per non-existent hour. This can only  
11 happen on purpose. Nobody trips and falls down and accidentally  
12 enrolls someone on their payroll. And even if you could indulge  
13 in the fantasy that someone tripped and fell down and  
14 accidentally put someone on their payroll, no one trips and falls  
15 down and accidentally quintuples the rate of pay for a fake job,  
16 for a guy who doesn't work for you, who doesn't do anything, by  
17 accident.

18 This is conclusive evidence of the corrupt bargain between  
19 Bill Wilson and Kekoa LumHo that they both knew this job was  
20 never a job at all, it was a pretext. They both knew it because,  
21 number one, Bill Wilson himself is the one who ordered this  
22 change in payroll. You heard through the Grand Jury testimony of  
23 his mother, Reba Sue Wilson, and from numerous other MSO Tech  
24 employees that at MSO Tech, Bill Wilson called the shots. He  
25 made all the decisions about hiring, firing, what people were

1 paid, how much, whether or not they got raises.

2 And ask yourself, ladies and gentlemen, just the common  
3 sense question, who has their salary quintupled from one week to  
4 the next? No one. Because this isn't salary, it's a bribe, the  
5 message was received. And Kekoa LumHo, he knew it, too. This is  
6 from the bank records from the fake account in Fidel Ramos's  
7 name. It's one of the earliest bribe payments, and you can see  
8 from the check it's dated February 15th, 2012. This is early on.  
9 The check in the total amount of about \$650 endorsed by  
10 Kekoa LumHo. The face of the check itself says MSO Tech. He saw  
11 it, he knew the rate at which the bribes were coming in. And  
12 then this is what happens after Kekoa LumHo sends his veiled  
13 request for a bribe. The check has increased by roughly tenfold.  
14 It's unmistakable. He knew what this was. He knew the message  
15 had been received.

16 Now, ladies and gentlemen, to prove defendant Wilson and  
17 Defendant Lumho guilty of bribery, we don't have to show you that  
18 they, in fact, changed their conduct. As you can see from the  
19 instructions, "In order to satisfy the elements of bribery or  
20 honest services fraud, the public official need not actually  
21 perform an official act or even intend to do so. When the  
22 defendant is a public official charged with receiving a bribe it  
23 is sufficient if the public official agrees to perform an act,  
24 official act, in exchange for a thing of value." And then down  
25 below, "You may, for example, conclude that an agreement was

1 reached if the evidence shows that the public official received a  
2 thing of value knowing that it was given with the expectation  
3 that the official would perform an official act in return."

4 "Likewise, when the defendant is a person who is charged  
5 with paying a bribe, it is sufficient if the defendant intends or  
6 solicits the public official to perform an official act in  
7 exchange for a thing of value."

8 What matters is intent. We don't have to show you that  
9 they, in fact, changed their behavior, but, ladies and gentlemen,  
10 we have. You'll recall that during the course of this trial  
11 there was evidence regarding something called the Bridge  
12 contract. The Bridge contract arose in October of 2011 when  
13 there was a sudden need to fill the gap created by a protest from  
14 some earlier contractors. And, as you saw throughout the trial,  
15 defense Counsel went to great lengths to point out that in  
16 October of 2011 when the Bridge contract was awarded, neither  
17 Ronald Capallia nor Kekoa LumHo were receiving anything of value  
18 from Bill Wilson, and that's true. The Bridge contract was not  
19 corrupt because of what Kekoa LumHo did or what Ron Capallia did,  
20 it was corrupt because of the pre-existing conspiracy between  
21 Bill Wilson and Tim Donelson. It was corrupt because  
22 Tim Donelson had awarded this WITS 3 subcontract to a  
23 construction firm that had no business or qualifications doing  
24 any kind of work like that. Defendant LumHo and defendant -- I'm  
25 sorry, Defendant Lumho and Ron Capallia were not yet a part of

1 the conspiracy, but, ladies and gentlemen, that experience  
2 necessarily showed Bill Wilson, Ron Capallia, and Kekoa LumHo  
3 their ability to influence the process. Bill Wilson undoubtedly  
4 learned how valuable it would be for him to be able to influence  
5 the actions of Ron Capallia and Kekoa LumHo, and, ladies and  
6 gentlemen, that's exactly what happened.

7 Compare their actions with respect to the Bridge contract.  
8 It was corrupt because of the prior conspiracy between  
9 Bill Wilson and Tim Donelson, but at least on the face of the  
10 service orders they weren't also fraudulent. You'll recall those  
11 service orders were for IT services, and by all accounts IT  
12 services were provided. But now compare that to their conduct  
13 once they are receiving bribes and kickbacks from Bill Wilson.

14 This is government's Exhibit 1406. What you're going to  
15 see, ladies and gentlemen, is that for each of these  
16 transactions, each one of these is fraudulent. Each one of these  
17 was based on a service order that was prepared by Ron Capallia  
18 and signed off on by or at the direction of Kekoa LumHo ordering  
19 all manner of things that you cannot order through WITS.

20 Significantly blowing up the price, pushing it through a contract  
21 never intended to buy any of these items, never giving Verizon an  
22 opportunity to compete, and then sending all of the business down  
23 to Bill Wilson's company, a company that has no legitimate reason  
24 to be involved and who adds no value to these transactions.

25 Consider from a business standpoint how ridiculous this

1 all is. There are plenty of options to order things. Washington  
2 Headquarter Services already had the contract that enabled them  
3 to provide moving services. And, yet, Kekoa LumHo directs his  
4 subordinate to sign off on a task order that calls what's really  
5 about 350 hours from Donny Ravas for moving services, 4,171 hours  
6 of cable installation services. Moving services that are  
7 provided by a guy who has zero employees and no clearance, where  
8 the price goes from somewhere in the neighborhood of \$30,000 with  
9 Blake & Sons, who actually did the bulk of the work charged, to  
10 \$70,000 to ultimately \$443,000.

11 Bill Wilson does not know anything about Adtran, Niksun,  
12 Cisco equipment. He's not a manufacturer or a retailer or a  
13 reseller. He doesn't know anything about what those items are,  
14 how they work, what they do, why they're needed. And yet, the  
15 co-conspirators work together to ensure those items get bought  
16 from him. First, Kekoa LumHo takes a quote with sensitive  
17 information about what somebody else would charge for this,  
18 equipment, and he forwards it on to Ron Capallia enabling Ron and  
19 ultimately Bill Wilson to run up the price. Ron, for his part,  
20 sends it to Bill Wilson, despite the fact that it makes no  
21 logical sense or business sense to do so. And here is  
22 Bill Wilson's response: "What the hell is this?"

23 Ask yourselves, ladies and gentlemen, what value was the  
24 government getting by contorting itself to use a  
25 telecommunications contract that doesn't allow you to buy this

1 type of equipment, to place an order with Level 3, a company that  
2 doesn't sell this equipment, to have them in turn place an order  
3 through Bill Wilson, a company located in Lake Butler, Florida, a  
4 company and a guy who doesn't know anything about this equipment,  
5 and then let's look at how it's billed.

6 Fraudulent service order, signed off on by Kekoa LumHo for  
7 942 hours of application project management services, and  
8 approximately 1700 hours of LAN/WAN integrator for the price of  
9 \$474,000 when Bill Wilson was able to buy this from a vendor for  
10 266, and adds no value.

11 The co-conspirators all needed each other. In fact, when  
12 you review the transactions in government's Exhibit 1406, which  
13 are the same transactions that are charged in the false count --  
14 false claims count for the indictment, you'll see this same  
15 absurdity throughout, where there's no logical or rational  
16 explanation for what happened other than the corrupt conspiracy  
17 among these defendants, Ron Capallia, and others. Now, ladies  
18 and gentlemen, they're all fraud and they're all corrupt, but  
19 perhaps the worst of them is the camera equipment.

20 On June 20th, 2012, Kekoa LumHo sends this e-mail, not  
21 from his DoD IG e-mail account, from his personal Gmail account.  
22 He sends it directly to Barry Atwood at MSO Tech, his friend and  
23 fishing buddy. And he asks for this high-end zoom lens, two  
24 black and white clear UV haze with multi-resistant coating,  
25 filters, a Canon Speedlite.



1 Ladies and gentlemen, there was no legitimate reason for  
2 Kekoa LumHo to buy this stuff at all. You heard from his  
3 co-workers, this has nothing to do with his job duties. And the  
4 story that he told you yesterday when he testified is not  
5 plausible. The DoD IG already had a professional photographer on  
6 staff. You saw from the record that Willie Spivey introduced,  
7 there's legitimate ways to buy cameras and in fact the DoD IG had  
8 already bought cameras. He asks you to believe that this item,  
9 or other items, zoom lenses, these were for an active directory  
10 project or for Outlook photos, or because there's a big room  
11 somewhere at the DoD IG that he needed to use government money to  
12 buy this? He claims that, well, they couldn't use the government  
13 purchase card because it was just too expensive.

14 Well, why on earth would you need anything this expensive  
15 at all, but let's just take the argument on its face, look at the  
16 prices on government's Exhibit 803. \$1,800 plus \$700, that's  
17 2500 bucks, maybe a little bit more with the two filter sets.  
18 That's still below the \$3,000 threshold for a government purchase  
19 card. There's no reason to buy any of this stuff, there's no  
20 reason to buy anything this expensive. But even if you did, you  
21 didn't need to do it through WITS.

22 And if you had any doubt, ladies and gentlemen, about his  
23 intent, consider the fact that his own Amazon records give it  
24 away. One day before he sends this bribe request to Barry Atwood  
25 using his personal e-mail account, he buys camera equipment of

1 the exact same size, 77 millimeters, that he has shipped to his  
2 own house with his own funds. All of this equipment was for his  
3 personal use, none of it was for any legitimate government  
4 business.

5 And that's the message that Bill Wilson and his  
6 co-conspirators got. After Kekoa LumHo made this request for a  
7 bribe, Barry Atwood, in his role as the go-between, forwards the  
8 request to Bill Wilson. The items are purchased, not shipped to  
9 the DoD IG, but shipped to Barry Atwood's residence. And then  
10 the items get fraudulently wrapped into a service order that  
11 Kekoa LumHo himself signs off on with the fraudulent explanation  
12 of 296 hours of cable installer, not for the \$2,600, the retail  
13 price of these items, but for \$20,000. Is it Mr. LumHo's  
14 testimony, is it truly his contention that this was required?  
15 That they just couldn't use the government purchase card, and as  
16 a result they had to lie about what it was and increase the price  
17 dramatically. A transaction of course again that would ensure  
18 that Bill Wilson would profit enormously, despite the fact that  
19 the only thing he has done in this entire process is go on to  
20 Amazon.com and ship items to his co-conspirator.

21 It gets even worse. Government's Exhibit 828 is a quote  
22 issued to MSO Tech in June of 2012. It's a quote from the Apple  
23 store. The Apple store at Pentagon City Mall which is right down  
24 the street from this courthouse, right down the street from the  
25 Mark Center. And as you'll see from this quote, the total price

1 for the items listed is \$11,000.

2 You'll also see that the second item listed in this quote  
3 is this camera, this EOS 60D camera used to bribe Kekoa LumHo.  
4 As you'll see, the total price is \$11,000, but Bill Wilson, not  
5 wanting to miss an opportunity, sends these exact same list of  
6 items, including this camera, EOS 60D, to Ron Capallia, the exact  
7 same list of items with the instruction, "Ron, add your cost to  
8 this and send it to Kekoa, please."

9 He doesn't describe the true cost, he identifies the cost  
10 as \$36,000. He knows that Ron's not going to care because he's  
11 paying Ron hundreds of thousands of dollars to do his bidding.

12 Ron Capallia dutiful prepares the fraudulent service  
13 order, calling this, "Cable Installer," 768 hours, not for the  
14 \$11,000 that it truly cost and that the government undoubtedly  
15 could have got it for, not even the fraudulently inflated \$36,000  
16 that Bill Wilson described it as, but even further inflating it  
17 \$54,000 of cable installer services, 768 hours that everyone in  
18 the conspiracy knows will not, in fact, happen.

19 But Ron is a little bit too careless for Kekoa LumHo  
20 because he's just a little bit too transparent about the fraud.  
21 He lists items in the technical support section, and Kekoa LumHo  
22 does not want there to be a paper trail of what their corrupt  
23 bargain was, he doesn't want the fraud to be that obvious.

24 And so after receiving this service order, Kekoa LumHo  
25 calls Ron Capallia, leaves the following voicemail with the

1 following instructions.

2 (Audiotape played.)

3 MR. BURKE: Remove all the line items. Remove the  
4 details. Nothing about Matt Steiniger told me to do it, nothing  
5 about Willie Spivey told me to do it, nothing about Stephen  
6 Wilson told me to do it. Remove the details, delete the evidence  
7 of our crime, and of course Ron Capallia obliged. He revised the  
8 fraudulent service order to be a little less obviously  
9 fraudulent. He revised the remarks section, still fraudulent, it  
10 still says, "Technical support for Apple cable installation."  
11 This isn't technical support for Apple cable installation, it's  
12 bribes and other equipment. Still fraudulently describing it as  
13 cable installer normal business day, 768 hours. Six months worth  
14 of work by some trained specialist? Still billing the government  
15 fraudulently \$54,000, and Kekoa LumHo signs off on it.

16 And so now Kekoa LumHo, Bill Wilson, Ron Capallia through  
17 their concerted action, have succeeded in causing the United  
18 States Government to pay for the bribes to Kekoa LumHo while  
19 Bill Wilson makes an enormous profit.

20 This sequence of events can only happen if the members of  
21 this conspiracy, if these defendants are knowingly participating  
22 in the fraud and acting in concert with one another. Bill Wilson  
23 paying the bribes and kickbacks. Tim Donelson awarding an IT  
24 contract to a company that digs trenches based in Lake Butler,  
25 Florida. Ron Capallia preparing the false and fraudulent service

1 orders. Barry Atwood helping to funnel the bribes to Kekoa LumHo  
2 after he receives them at his house, and Kekoa LumHo signing off  
3 on the false service orders after directing Ron Capallia to  
4 delete the incriminating information. Despite any legitimate  
5 reason to order this equipment, to use WITS, to use Level 3, or  
6 to use Bill Wilson's company, this cannot happen by accident.

7 So how does all that relate to the charges in the  
8 indictment? Count 10 of the indictment charges Bill Wilson with  
9 bribery of a public official, and you'll see that the government  
10 is required to prove three elements: Number one,  
11 defendant William Wilson directed or didn't direct offered or  
12 promised to give something of value as described in the  
13 indictment to Matthew Kekoa LumHo, the official alleged in the  
14 indictment; number two, LumHo the official alleged in the  
15 indictment was at the time an official of the United States or  
16 was acting on behalf of the United States; and, number three,  
17 defendant Wilson made the gift offer or promise corruptly with  
18 the intent to influence an official act.

19 You'll see that the elements with respect to Count 11,  
20 which charges Kekoa LumHo with receiving bribes as a public  
21 official are very similar. Element 1, defendant LumHo directly  
22 or indirectly demanded, sought, received, accepted, or agreed to  
23 receive or accept something of value as described in the  
24 indictment; two, Mr. LumHo was at that time a public official of  
25 the United States, or was acting on behalf of the United States;

1 and, three, LumHo demanded, sought, received, accepted, or agreed  
2 to receive or accept the item of value corruptly. In return for  
3 being influenced in the performance of any official act.

4 Did Bill Wilson give things of value to Ron Capallia?  
5 Absolutely. Did Ron Capallia receive things of value from  
6 Bill Wilson? Absolutely. Was LumHo a public official at the  
7 time? Yeah. Yeah, he sure was. He was working at the  
8 Department of Defense's Office of Inspector General, an entity  
9 that is supposed to be dedicated to rooting out fraud, waste, and  
10 abuse. So, yes, he was a public official. And, third, did  
11 Bill Wilson give the items with corrupt intent? Did Kekoa LumHo  
12 receive the items with corrupt intent? Of course they did. The  
13 pretext of the fake job. Of course. The efforts at concealment,  
14 yes. The conduct? Absolutely. The timing of the payments,  
15 payments being made while everyone knows that Kekoa LumHo is in  
16 control of this WITS 3 contracting, the decision to steer work  
17 through Level 3 despite any reason to do so. The need to falsify  
18 the service orders, to steer down to Bill Wilson's company. All  
19 of that tells you their corrupt intent. And there's more.

20 There's Kekoa LumHo's efforts to paper over the record, to  
21 make all of this look legitimate, including his decision to sign  
22 off on a fraudulent back dated fictitious fair opportunity  
23 letter. He knows that this letter is not real. He knows that  
24 it's back dated. He knows that there's nothing called the  
25 Regional Contracting Office National Capital Region. He wants

1 you to believe that he didn't know anything about the WITS 3  
2 contract and that because of his absence of training, he couldn't  
3 possibly have understood that what he was doing was wrong.

4 But when it came time for him to cover it up, to make it  
5 look like everything was legitimate, to make it look like there  
6 had been competition, to make it look like there had been some  
7 form of official blessing, that these actions, that these orders  
8 were in the best interest of the government, he had no  
9 hesitation. He had no hesitation to talk about the fair  
10 opportunity notification letter, how the DoD IG had selected WITS  
11 3 as our preferred provider for the following WITS 3 services,  
12 professional services and customer premise equipment. He had no  
13 hesitation to explain, should you have any questions regarding  
14 this notification, please contact Mr. Kekoa LumHo with his phone  
15 number and his e-mail address. Nothing about Matthew Steiniger.  
16 Nothing about Tommy Carlyle. Don't send your questions to Steve  
17 Wilson. If you've got any issues, come to me.

18 And he didn't just sign this fraudulent back dated letter  
19 seeding the record with the false appearance of legitimacy, the  
20 false appearance of competition, he also decides to create this  
21 fraudulent e-mail. He doesn't copy Matthew Steiniger, he doesn't  
22 copy Willie Spivey or Steve Wilson or anybody else. When  
23 Ron Capallia needs a fraudulent backdated letter he goes to  
24 Kekoa LumHo, and then Kekoa LumHo sends it back fully on board  
25 with the conspiracy, "Ron, attached is the fair opportunity

1 letter I thought I had sent last year. I looked through my  
2 e-mail, and, in fact, I did not send it." All lies. He didn't  
3 think he sent it last year. He didn't look through his e-mail  
4 account. It wasn't just "his bad." This was not a mistake.  
5 This was intentional, purposeful conduct in furtherance of the  
6 conspiracy demonstrating his corrupt intent.

7 And, then, consider, ladies and gentlemen, how the conduct  
8 of the co-conspirators suddenly changed the moment that  
9 Kekoa LumHo realized that he was under investigation, and that  
10 his conduct would be scrutinized.

11 On October 11th, 2012, Kekoa LumHo receives the e-mail you  
12 see marked as government's Exhibit 240. And in that e-mail he  
13 learns for the first time that he is going to be audited.  
14 There's no more hiding, there's no more obfuscation, he's going  
15 to have to turn over the documents, the documents that he knows  
16 are fraudulent, and that he fears will reveal his crimes. And  
17 look what happens.

18 One day before Kekoa LumHo learns that his conduct is  
19 going to be scrutinized, he deposits the last of the bribery  
20 checks, supposedly in the name of Fidel Ramos, his father-in-law.  
21 And then look what happens after he learns of the audit. The  
22 checks keep coming, but he doesn't deposit them. If Mr. LumHo  
23 really thought this was a real job, he would have gone right on  
24 cashing those checks. If Mr. LumHo really was unaware, as he now  
25 claims, that this job had nothing to do with MSO, he would have



1 gone right along cashing those checks. He doesn't. He stops  
2 because he knows the scrutiny is on him, and his sudden change in  
3 behavior tells you everything you need to know about his  
4 knowledge, about his intent. It was corruption. He knew it.

5 Consider also how Bill Wilson behaved. If Bill Wilson  
6 really thought there was some guy named Fidel Ramos who worked  
7 for him, he would have gone right on sending the checks to his  
8 loyal employee. If it was really just a mistake that somehow  
9 Fidel Ramos accidentally got added to the payroll, the checks  
10 would have kept on being issued, but that's not at all what  
11 happens.

12 Bill Wilson learns that Kekoa LumHo has been removed from  
13 control of the WITS 3 contract. Bill Wilson now knows that  
14 there's nothing in it for him. Kekoa LumHo can't scratch his  
15 back anymore, so he stops sending the checks because it was  
16 corrupt. Because these were bribes, and because they both knew  
17 it.

18 And then consider the money, ladies and gentlemen, all the  
19 money. Look at what happens. In his testimony yesterday,  
20 Kekoa LumHo told you that within the information services  
21 directorate everyone loved WITS. They wanted to spend money  
22 using WITS. It was great.

23 He didn't do anything to influence this process. He  
24 didn't care. Well, ladies and gentlemen, why is it, then, that  
25 before Kekoa LumHo has control of the WITS 3 contract there's

1 very little money going to Bill Wilson. And, then, after the  
2 bribes start rolling in, the money quintuples. And why is it,  
3 ladies and gentlemen, that everyone else was really controlling  
4 WITS 3, if everyone else was the one who really was deciding that  
5 this was a great thing, why is it that after Kekoa LumHo is  
6 pulled from control of this contract the revenue plummets  
7 dramatically. If Kekoa LumHo's story was true, the money would  
8 tell a different tale.

9 And, ladies and gentlemen, if you had any doubt about  
10 Bill Wilson's intent, consider his pattern of behavior. Consider  
11 how he behaved with respect to Ron Capallia, just as he did with  
12 Kekoa LumHo, creating a fictitious job for Fidel Ramos as a  
13 pretext through which to route bribe payments to him.

14 Bill Wilson does the exact same thing with Ron Capallia,  
15 putting Ron Capallia's wife nominally on the payroll as a  
16 secretary, even though MSO Tech has no office in West Virginia  
17 and then paying her an obscene amount of money for work that  
18 never happened.

19 It's painfully obvious what's going on here. So that  
20 brings me back to Count 1. As I explained, the conspiracy has  
21 already been proven with respect to Bill Wilson because of his  
22 corrupt bargain with Tim Donelson. But the further evidence that  
23 we've shown you, ladies and gentlemen, shows that the conspiracy  
24 wasn't just Bill Wilson and Tim Donelson, that all of these acts  
25 demonstrate that Kekoa LumHo was a knowing and active member of

1 the conspiracy just as well.

2 Again, the conspiracy agreement or understanding to commit  
3 wire fraud as described in the indictment: Is formed, reached,  
4 or entered into by two or more persons, the defendant at some  
5 point during the existence of the conspiracy, the defendant knew  
6 the purpose, and with knowledge of the purpose of the conspiracy,  
7 the defendant deliberately joined.

8 Undoubtedly true. The evidence proving both defendants  
9 guilty of the conspiracy is undeniable. But the evidence that  
10 I've described also shows that both defendant Wilson and  
11 Defendant Lumho are guilty of Count 2.

12 Count 1, is a conspiracy count, which requires proof of an  
13 agreement to engage in a scheme to defraud.

14 Count 2, in which both defendant Wilson and defendant  
15 LumHo are charged is substantive wire fraud. And what you've  
16 been instructed and what you'll see when you view the jury  
17 instructions is that a scheme to fraud can be proven in one of  
18 two ways. It can either be proven under what's often referred to  
19 as a traditional money and property scheme, or what's often  
20 referred to as an honest services scheme.

21 In the context of the of a money and property scheme, in  
22 summary, and without altering anything that Judge O'Grady  
23 instructed you, that generally involves lies, deception, or  
24 deceit in order to obtain money. Whereas, honest services  
25 requires proof of a scheme involving kickbacks or bribes.

1           As I've already explained, the evidence proves both of  
2 these types of schemes as to both defendants. They both engaged  
3 in money and property fraud because of all of their efforts,  
4 working in concert with each other to submit fraudulent claims  
5 that they ultimately knew would be paid by the government and  
6 would benefit them. And they also engaged in honest services  
7 wire fraud. Bill Wilson, because he paid kickbacks to  
8 Tim Donelson, because he paid kickbacks to Ron Capallia, because  
9 he paid bribes to Kekoa LumHo, and Kekoa LumHo because he  
10 received, knowingly, bribes from Bill Wilson.

11           And you'll see further definitions of what the scheme to  
12 defraud intangible right of honest services means. It means that  
13 the people involved violated their fiduciary duties. The public  
14 officials have a fiduciary duty to act in the best interest of  
15 the public, and not for their personal self interest. That  
16 employees have a fiduciary duty to act in the best interest of  
17 their employers, and that whether or not you owe a fiduciary  
18 duty, if you take actions to try to cause somebody else to  
19 violate their fiduciary duty by paying kickbacks to an employee,  
20 by paying bribes to a public official, you're just as guilty of  
21 that honest services wire fraud as them.

22           Now, what I've explained so far demonstrates why the proof  
23 shows overwhelmingly that LumHo and Wilson are both engaged in a  
24 scheme to defraud under either definition. But as to wire fraud,  
25 the substantive counts, you'll see that one of the elements that

1 we have to prove is that during or in furtherance of the scheme  
2 the co-conspirators caused, sent, or caused an interstate wire  
3 communication. It's another element of the offense, and that  
4 element has been satisfied by Stipulation 1212.

5 In Stipulation 1212, the parties have agreed that all of  
6 the communications described in Count 2, Count 3, and Count 4 all  
7 crossed state lines. There were communications sent from the  
8 Eastern District of Virginia outside of the state. And as you'll  
9 see, ladies and gentlemen, the defendant at issue does not  
10 himself have to be the one who sends the wire.

11 The government need not prove that the defendant  
12 personally used a wire communication in Interstate Commerce or  
13 that the defendant even intended that anything be transmitted in  
14 Interstate Commerce. The government must prove beyond a  
15 reasonable doubt, however, that a transmission in Interstate  
16 Commerce was, in fact, used in some manner to further the scheme.

17 We've proven that. We've proven that in part through  
18 Stipulation 1212, but you have the evidence as well.  
19 Government's Exhibit 189 is the transmission, the communication  
20 that's charged in Count 2. That's the wiring. Both LumHo and  
21 Wilson are charged in Count 2. And the wiring that completes the  
22 scheme is this purchase requisition where Ron Capallia is sending  
23 this information from his office in McLean to Level 3's  
24 headquarters in Broomfield, Colorado. A transmission that's  
25 necessary to make sure that Bill Wilson gets paid for this work

1 that he has obtained and secured through the corrupt bargain that  
2 he has with Tim Donelson, with Ron Capallia, and with  
3 Kekoa LumHo. Bill Wilson, Kekoa LumHo, both guilty of Count 2.

4 Count 3, and, Count 4, are more substantive wire fraud  
5 counts that charge Bill Wilson only. Count 3 is another e-mail  
6 sent by Ron Capallia from his office in McLean to Level 3's  
7 headquarters in Broomfield, Colorado, crossing state lines,  
8 requesting that an invoice from Bill Wilson get paid. So did  
9 this further the scheme? Of course it did. The whole point of  
10 the scheme was for Bill Wilson to corrupt the other parties so  
11 that he could get rich and cut them off a piece.

12 Count 4 is the same thing, another e-mail sent in  
13 Interstate Commerce by Ron Capallia while he's under the  
14 influence of the corruption of Bill Wilson to benefit  
15 Bill Wilson.

16 Now, ladies and gentlemen, in addition to the conspiracy  
17 and the wire fraud, substantive wire fraud counts in the  
18 indictment, Counts 5 through 9 of the indictment also charge  
19 these defendants with false claims. And the elements that the  
20 government is required to prove as to Counts 5 through 9 are on  
21 your screen now. One, the defendant willfully made, presented or  
22 caused to be presented to the General Services Administration a  
23 claim against the United States; two, at the time that the claim  
24 was presented, the General Services Administration was a  
25 department or agency of the United States; three, that the claim

1 was -- the claim presented was false, fictitious or fraudulent;  
2 four, the defendant knew that the claim was false fictitious or  
3 fraudulent; and, five, the false fictitious or fraudulent  
4 information was material.

5 So did these defendants make, present or cause to be  
6 presented, claims to the General Services Administration? Of  
7 course they did. All those fraudulent service orders that you  
8 saw, I'm going walk you through them in a minute, and you're  
9 going to see how the fraudulent service orders get wrapped up in  
10 monthly bills that get submitted to GSA as a part of a claim for  
11 payment; two, was the General Services Administration an agency  
12 of the United States? Of course it was; three, was the claim  
13 false fictitious and fraudulent? I'm going to walk you through  
14 exactly how we've proven that in just a moment; four, did the  
15 defendant know? Yes. And was it material? Of course. As you  
16 heard from Tina LeBlanc, had they known that these items were  
17 fraudulent they wouldn't have paid them. And as you'll see,  
18 ladies and gentlemen, from the transactions and from the summary  
19 chart, 1406, every single one of these was fraudulent. They call  
20 it "Cable installer." 443,000 hours of cable installer.

21 But what does the government get? 300 or so hours of  
22 moving services from Donny Ravas who has no employees and no  
23 clearance.

24 Here's the bill charged in Count 5, sent to GSA on  
25 March 1st, including that fraudulent service order that

1     Kekoa LumHo directed Tommy Carlyle to sign. He wants to put that  
2     off on Tommy Carlyle, ladies and gentlemen, but he's the one who  
3     directed Tommy Carlyle to do it.

4             Count 6, yet another fraudulent service order approved,  
5     signed off on by Kekoa LumHo, calling work that's really office  
6     moving services about 33 hours of office moving services done by  
7     Blake & Sons and then with the assistance of Donny Ravas, calling  
8     that 755 hours of "Cable installer," rather than charging the  
9     government for what it really got through their concerted action,  
10    that caused the government to pay for 755 hours of cable  
11    installer at a price of \$80,000. That's Count 6. It gets  
12    wrapped up into the monthly bill, submitted to GSA.

13            Count 7, again, the co-conspirators acting in concert with  
14    one another to make sure that fraudulent service orders are sent  
15    and approved by Kekoa LumHo for items you can't buy under WITS,  
16    to ensure that it goes to Bill Wilson's company. Application  
17    project manager, LAN/WAN integrator, 2,666 hours, supposedly, of  
18    professional services. When, in fact, what we actually got was  
19    zero hours. We got equipment, equipment that MSO Tech bought for  
20    \$266,000. But instead of getting that equipment at the real  
21    price, because of their concerted action, because of their fraud,  
22    they were able to charge the government an extra \$200,000,  
23    leaving plenty of profit left over for Bill Wilson to make money  
24    and pay the kickbacks to the other members of the conspiracy,  
25    including the fraudulent service order that included the Bose



1 SoundDock that you see right there, with no legitimate business  
2 purpose. Wrapped into Count 7, same thing for Count 8, order  
3 after order after order after order.

4 Count 9, another fraudulent service order signed off on by  
5 Kekoa LumHo acting in concert with Ron Capallia all to benefit  
6 Bill Wilson, despite the absence of any legitimate economic,  
7 business, or national security reason to do that.

8 THE COURT: You're at about 75 minutes now, Mr. Burke.

9 MR. BURKE: Your Honor, I'll --

10 THE COURT: I'm just giving you --

11 MR. BURKE: Thank you --

12 THE COURT: -- a time count.

13 MR. BURKE: Now, ladies and gentlemen, you heard in  
14 Kekoa LumHo's testimony yesterday, his claim that every single  
15 one of these service orders he showed and got approval from  
16 Matthew Steiniger or from Willie Spivey or from Stephen Wilson,  
17 that he relied on their advice. It's not his fault, it's  
18 Matthew Steiniger's fault or it's Ron Capallia's fault, or  
19 perhaps it's Tommy Carlyle's fault.

20 But, ladies and gentlemen, consider the testimony of  
21 Special Agent Allison Russo from this morning. A hundred  
22 thousand e-mails, searched extensively. And in the course of all  
23 those, the only e-mail found prior to the audit was one e-mail  
24 where Kekoa LumHo sends a non-fraudulent service order. A  
25 non-fraudulent service order that isn't the basis for any of

1 these charges. Consider, ladies and gentlemen, who was in charge  
2 of WITS? Matthew Steiniger wasn't a designated agency  
3 representative, Kekoa LumHo was. And consider, ladies and  
4 gentlemen, the e-mails from the time period in question.

5 Here's an e-mail from back in 2012 when Kekoa LumHo was  
6 still in charge, Willie Spivey saying, "Please provide a status  
7 for the pending order of the 200 laptops requested through the  
8 WITS contract. Provide the order requisition number used in the  
9 process as well and the order delivery information." If he is  
10 really sharing all of these orders with his co -- with his  
11 co-workers, why is it that they're so desperate to get them from  
12 him? And why is it, then, that he, rather than handing over the  
13 documentation, says, oh, I've cancelled the order?

14 Consider, ladies and gentlemen, this e-mail from Matthew  
15 Steiniger, again, saying, "We've got the items as part of  
16 installs from WITS, somebody bought them. It seems somebody  
17 either has an invoice or doesn't." You could see his  
18 frustration. But does Kekoa LumHo say, hey, I signed that  
19 fraudulent service order a couple of weeks ago. Does he hand it  
20 over? Of course not. He sends an e-mail to his co-conspirators  
21 trying to get them to keep a lid on it.

22 So, ladies and gentlemen, the evidence that we've  
23 discussed proves overwhelmingly that the defendants are guilty of  
24 the conspiracy, of the substantive wire fraud count, of the false  
25 claims, but what's just as damning is the cover up. And both

1 defendants engaged in actions throughout to cover up their  
2 actions. Their efforts to coverup what they did is just as  
3 powerful evidence as their intent. The coverup of course starts  
4 with LumHo. Every year you're required to fill out a  
5 confidential disclosure form, and here he is claiming that he had  
6 no non-investment income, no gifts and travel reimbursements.  
7 False. And he knows that it's false, ladies and gentlemen. You  
8 can't own the bribe so he lies on his confidential disclosure  
9 form, despite the fact that he knows full well that this money  
10 was coming to him, despite the Canon camera equipment and the  
11 Bose SoundDock, despite the fact that he himself deposited this  
12 \$6,500 check that he used on his trip to Hawaii that he knew was  
13 from MSO Tech.

14 It's not just that, ladies and gentlemen, it's his efforts  
15 in the months that followed to make it look like this job was  
16 real. This is Fidel Ramos's restricted license order. Again,  
17 you know who didn't fill this out. It wasn't Fidel Ramos, he  
18 can't read. He doesn't know what MSO Tech is. He doesn't know  
19 what MSO Tech's office in Manassas, Virginia is. He doesn't know  
20 their phone number or their mailing address, and, as you heard,  
21 ladies and gentlemen, he was very clear during his testimony in  
22 the Grand Jury. Kekoa LumHo was with me. He was the one  
23 providing the information, and of course it was him. Who else  
24 would have known? Who else had an incentive to provide fake  
25 information to make this job look real?

1           The application for employment at the Catholic Arch  
2 Diocese. You know Fidel Ramos didn't fill this out, he can't  
3 write, he doesn't know any of this information, so you know where  
4 the information came from.

5           And then, ladies and gentlemen, yesterday Defendant Lumho  
6 claimed that he was trying to help the investigators. But look  
7 at his actions. When he learns that the investigators are  
8 getting close to his bank records, bank records that he knows  
9 will reveal his crime, bank records that he doesn't want the  
10 investigators or ultimately you to see, he files this motion to  
11 quash, to try to prevent his conduct, his actions, his crimes  
12 from coming to light.

13           And then, of course, ladies and gentlemen, there's the  
14 efforts of cover up by defendant Wilson. Count 14, is a false  
15 statement count. This is from the interview that Ed Cassin did  
16 in Alexandria of defendant Wilson. An interview where  
17 defendant Wilson claimed that he had never provided  
18 Timothy Donelson of anything of value besides a vehicle. He  
19 claimed that he had purchased a vehicle for Natalie Capallia to  
20 enable her to survey land; that Natalie Capallia had identified  
21 properties in Florida and Georgia for Wilson to purchase; that he  
22 had paid for Natalie Capallia to go on a cruise in the Caribbean  
23 to look for properties on his behalf. Ladies and gentlemen, it's  
24 preposterously false, and his efforts to cover it up show that he  
25 knew all along that what he was doing was criminal.

1           And, then there's the statements Bill Wilson made during  
2 his deposition which is marked as government's Exhibit 400. I  
3 encourage you to read it, ladies and gentlemen.

4           Under oath, over and over and over again, Bill Wilson said  
5 things that are just impossible to believe; PVS used a bulldozer  
6 supplied by Tim Donelson. No, they didn't; PVS used a  
7 bulldozer -- Wilson hired Natalie Capallia to perform  
8 administrative work in search of real estate. No, she didn't;  
9 Wilson met with Natalie Capallia three times for hiring; that he  
10 had purchased two properties that Natalie Capallia found; that he  
11 purchased two vehicles for Natalie Capallia to enable her to  
12 perform work on behalf of Wilson; that he never provided anything  
13 of value to Ron Capallia aside from the salary and vehicles  
14 provided to Natalie Capallia; that he never provided anything to  
15 LumHo; and that he had never bought anything for LumHo directly  
16 or indirectly.

17           And then, ladies and gentlemen, you saw all the other  
18 evidence of the attempt to cover up by Bill Wilson. You saw his  
19 actions in throwing a Lenovo laptop into a fire after he learned  
20 of the investigations, of smashing the hard drive in his office.  
21 Upon learning of the investigation in that L.C. Simmons was being  
22 brought up here to testify in the Grand Jury, saying, "The less  
23 you say about Tim Donelson, the better. You don't know anything  
24 about those invoices." Which was totally false.

25           And then worst of all, ladies and gentlemen, knowing that,

1 of course, Ron Capallia's testimony would overwhelmingly reveal  
2 his guilt, threatening to kill Ron Capallia and his family.

3 So, ladies and gentlemen, at the beginning of this case,  
4 my co-counsel, Mr. Carlberg, told you that this was about  
5 corruption and cover up. We've shown you the corruption. We've  
6 shown you the efforts at the cover up. The efforts at a cover up  
7 these defendants sought in the hopes that this day would never  
8 arrive. But, ladies and gentlemen, now this day has arrived, so  
9 now it's up to you.

10 The evidence proves both defendants guilty overwhelmingly  
11 of every count in the indictment. And so we ask that you return  
12 the only verdict consistent with the evidence, a verdict of  
13 guilty on all counts as to both defendants.

14 THE COURT: Thank you. All right. Let's take a brief  
15 recess. Let's take ten minutes, and we'll come back and continue  
16 with closing arguments. All right. You're excused.

17 (Jury out at 3:35 p.m.)

18 THE COURT: All right. Anything before we break?

19 MR. AMOLSCH: No, sir.

20 THE COURT: Who's going to go next?

21 MR. STEWART: (Raised hand.)

22 THE COURT: Let's take 10 minutes, we'll be in recess.

23 (Thereupon, a recess in the proceedings occurred from  
24 3:36 p.m. until 3:49 p.m.)

25 THE COURT: All right. Ready?

1 MR. STEWART: Yes, sir.

2 THE COURT: Ira, please.

3 (Jury in at 3:50 p.m.)

4 THE COURT: All right. Please, have a seat. All right.

5 Mr. Stewart.

6 **CLOSING ARGUMENT ON BEHALF OF DEFENDANT WILLIAM WILSON**

7 MR. STEWART: Thank you, Your Honor.

8 Good afternoon, ladies and gentlemen. We've been together  
9 for about two and a half weeks now, I still have the compulsion  
10 to introduce myself. I'm sure you've heard my name enough over  
11 the last couple of days.

12 The government asked you at the opening of their closing  
13 remarks, how did we get here? They asked that you repeatedly.  
14 And I have a different answer, as you might imagine. We got here  
15 because of chaos and confusion within the DoD IG and Level 3. No  
16 one knew how these contracts worked. I don't think -- I don't  
17 think anybody truly understood how complicated this government  
18 contracting can be, especially when you have this perfect storm  
19 of the government going into almost a shutdown situation, they're  
20 trying to move out of a building at the same time. It was a  
21 disaster, it was chaos.

22 Before I go too much further, I want to discuss where we  
23 left off yesterday. You had the opportunity to hear witnesses  
24 that were called by Mr. Wilson. You had the opportunity to  
25 listen directly to Mr. LumHo, and during the trial you learned

1 through the government witnesses that Mr. Wilson had made some  
2 prior statements. Mr. Wilson's story is in the evidence, and  
3 you'll have his statements at your disposal to review while  
4 you're deliberating.

5 You heard from a number of witnesses who testified on  
6 behalf of Mr. Wilson to confirm where the bulldozer did its work.  
7 We didn't call additional witnesses to speak about his good  
8 character because we felt as you already heard about Mr. Wilson's  
9 generosity during this trial.

10 In addition to the statements that you already have as  
11 exhibits, and you'll have the opportunity to review, you also  
12 listened to testimony relating to prior statements that were made  
13 by Mr. Wilson that the government contends are false. It's  
14 important to remember that, and as you watched this as witnesses  
15 testified throughout this trial, people's memories can fade.  
16 People can have difficulty remembering things, and you observed  
17 some of the witnesses misremember, be slightly off on a date, and  
18 how challenging that can be when you're facing examination from  
19 an attorney. The first set of statements that Mr. Wilson made  
20 that the government contends are false occurred back in April of  
21 2014, I think it was April 2nd of 2014, and this is when agents  
22 interviewed Mr. Wilson.

23 Now, there was a lot of information that he shared, there  
24 was some information that he didn't share. Agent Doyle, though,  
25 would agree or agreed during his testimony that Bill Wilson told



1     them, Natalie worked for MSO, Bill Wilson told them he paid her.  
2     He told them how much he paid her at the time. He acknowledged  
3     buying a truck for Mr. Donelson, he acknowledged buying a car for  
4     the Capallia's. He made payments from MSO directly. There's no  
5     effort to conceal those payments for the vehicles. And he  
6     acknowledged a personal business relationship with Tim Donelson.  
7     That sounds like a lot of the things we've been talking about  
8     over the last couple of -- well, two and a half weeks.

9             He told her about NASCAR races, he told her about fishing  
10     trips with Tim Donelson and LumHo. He even told them that he was  
11     going to meet with his partners, including Tim Donelson later  
12     that day, the same day as the interview.

13            While Agent Doyle might believe that some of Bill Wilson's  
14     answers weren't a hundred percent true or precise, they were  
15     still -- it was still clear that he provided the agents with  
16     information that allowed them to further their investigation.  
17     Without that information they wouldn't have gone and subpoenaed  
18     car records, without that information they would not have  
19     subpoenaed bank records. Maybe they still would have, but  
20     getting that information from Mr. Wilson certainly shortened the  
21     amount of time or shortened the curve -- the work curve that they  
22     would have to go through.

23            The next set of statements occurred during the deposition.  
24     You have this, I think the government referred to it by exhibit.  
25     Again, during this deposition Mr. Wilson provided quite a bit of

1 historical information, how he met who, how he got involved with  
2 different companies, things along those nature -- things along --  
3 things of that nature. I'm sorry.

4 Certain questions were confusing. I think one of the ones  
5 that came up was exchange about a car. Did you buy Tim Donelson  
6 a car? No. Did you buy him any vehicle? A vehicle? Yeah, I  
7 got him a truck. Those are the kinds of exchanges we see  
8 throughout this deposition.

9 Now, Bill Wilson also made statements that related to the  
10 bulldozer. Do you remember the bulldozer? We spent the first  
11 week talking about it. Now, specifically there was concern about  
12 the bulldozer as it relates to the JEA project, and what  
13 bulldozer was there, not if a bulldozer was there, but which  
14 bulldozer.

15 And he told agents, or he testified during the deposition  
16 that the Case bulldozer that was owned by Donelson and  
17 Mr. Wilson, through CSS, that was the company that they had, the  
18 partnership, that that bulldozer was at the JEA location. We've  
19 heard all kinds of testimony about that JEA business location  
20 during this trial. I think it's pretty clear that it was the  
21 John Deere.

22 I just wanted to explain that obviously he was mistaken.  
23 Those two bulldozers were bought and sold relatively closely in  
24 time. The business arrangement that he had with Mr. Donelson  
25 remained the same, and ultimately he was making these statements,

1 at least some years after these transactions had occurred, and  
2 again, sometimes memory takes refreshing. Sometimes people just  
3 misspeak or make a mistake.

4 During the rest of my closing, moving on from the  
5 statements, I would like you to think about a few key points.  
6 First, Bill Wilson received contracts from Level 3 before he met  
7 Tim Donelson. Second, Bill Wilson and Tim Donelson had a  
8 legitimate business relationship before, during, and after the  
9 2010-2014 window that encompassed the allegations in this case.  
10 Third, Level 3 was independently motivated to maximize their  
11 profits, regardless of the proper procedures. That dovetails  
12 with the whole chaos and no one understands how government  
13 contracting works in an emergency. Fourth, Bill Wilson had a  
14 WITS 3 professional services contract before Ron Capallia became  
15 a project manager for the DoD IG project. Fifth -- there's only  
16 two more -- Ron Capallia didn't have the discretion to do  
17 anything for MSO, and, he didn't change his behavior after he  
18 began receiving gifts. Sixth, after Ron Capallia resigned from  
19 Level 3, he continued to receive gifts. So, again, it's been two  
20 and a half weeks, and I'd like to rewind and sort of go to the  
21 beginning and review some of the background of Mr. Wilson.

22 Bill Wilson has spent his entire life working, working  
23 hard. He built a business from scratch and eventually he built  
24 it into something where he was competing for multi-million dollar  
25 contracts.

1           His journey began in Lake Butler, Florida, population  
2           2000. He owned a landscaping company. His long time friend,  
3           Sandy Darden testified, and he told you how Bill got a contract  
4           with Alltel to mow the lawns or the ground around these cell  
5           towers.

6           Eventually, he developed a relationship with Troy Wilson  
7           at Alltel who encouraged him to form this company PVS. And  
8           Bill Wilson worked his way up from mowing the lawn around these  
9           cell towers to eventually building the cell towers.

10          He did that in part because of the relationship that he  
11          built with Troy Wilson, but he also did it because he did good  
12          work. Now, Sandy Darden also testified, if Bill Wilson didn't  
13          have experience building cell towers before he started building  
14          cell towers, but he learned how to do it, he did it well.  
15          Building cell towers was good business, and the majority of the  
16          work PVS did at the time was with Alltel. Bill's work with  
17          Alltel eventually moved on to Nextel. He followed Troy Wilson  
18          there, and Bill transitioned from building cell towers to  
19          building switches for cellular networks. And, again,  
20          Sandy Darden was here for all of this, and he testified and told  
21          you that as with the cell towers, Bill Wilson didn't have  
22          experience building switches for cellular network, but he learned  
23          how to do it and he did it well. Building switches for cell  
24          tower network was good business and the majority of the work PVS  
25          did at that time was for Nextel. Now, when working with Nextel,

1 Bill formed MSO in 2000, and you heard testimony from Dean Carter  
2 that 100 percent of MSO business was coming from Nextel, and they  
3 were doing jobs all over the United States. Dean Carter  
4 explained how MSO would hire subcontractors to work on projects  
5 that were local to the region, the subcon- -- obviously, the  
6 projects were local to the region, the subcontractors were local  
7 to the region. But, during this time MSO had nothing to do with  
8 Tim Donelson, had nothing to do with Level 3. While working on a  
9 job for Nextel, that's when Bill was introduced to Level 3. And,  
10 eventually he was invited to start bidding on projects laying  
11 fiber optic cable for government entities all over the country.

12 And then we have an important date, December 17th, 2004.  
13 Bill Wilson signs the nondisclosure agreement with Level 3. This  
14 is defense Exhibit 130 for those of you keeping track. This  
15 agreement is where they agreed to engage in discussions  
16 concerning a potential business transaction. So basically  
17 they've agreed that they're going to talk about business and  
18 they're not going to share it.

19 That contract was signed by Brian Farley on behalf of  
20 Level 3, not Tim Donelson. Later in 2005, MSO was awarded the  
21 first contract by Level 3. Laying fiber optic cable in  
22 Oklahoma City or -- I always forget the name, Tinker's [sic] Air  
23 Force Base. Now, around this time Dean Carter, he returns to  
24 MSO, and he testified and he told you that Bill Wilson didn't  
25 have experience laying fiber optic cable but he learned how to do

1 it, and he did it well. Laying fiber optic cable was good  
2 business, and the majority of the work that MSO did at the time  
3 was for Level 3. Dean Carter testified that like its work at  
4 Nextel, MSO was providing construction management services for  
5 Level 3, and they hired subcontractors with local experience.  
6 The way that these projects increased to a point where MSO was  
7 actually also participating in the construction, so they were  
8 doing both.

9 The work with Level 3 and various government agencies  
10 required certain MSO employees to obtain security clearances in  
11 order to gain access to facilities. There's been a lot of talk  
12 about security clearances and whether or not that's the only  
13 consideration in awarding these contracts. And we'll talk later  
14 about the fair value process and all of the other considerations  
15 that go into choosing a subcontractor. Now, the employees that  
16 obtain security clearances at the time were Bill Wilson,  
17 Dean Carter, and Billy Ray Hall. A facility clearance was also  
18 required to store documents obtained by MSO, and MSO obtained  
19 what they call an FCL.

20 Now, during this same timeframe we heard from Agent Cassin  
21 that Bill Wilson met Tim Donelson while working on a Level 3  
22 project. They became fast friends. They hunted together. They  
23 went to NASCAR together. And, eventually, in 2008 they formed a  
24 partnership together.

25 This company was called CSS, I mentioned it earlier. And

1 its purpose was to pursue construction opportunities. And then  
2 in 2010 Tim Donelson formed Apposite and dissolved CSS. This  
3 brings us up to that 2010, 2014 window. So I want to shift gears  
4 a little bit and discuss Count 1, as it relates to Tim Donelson.  
5 This is the conspiracy to commit honest services fraud and the  
6 money and property wire fraud.

7 The government argues that Bill Wilson paid thousands of  
8 dollars of kickbacks to Tim Donelson in exchange for favorable  
9 treatment. You heard testimony that Bill Wilson purchased a  
10 property adjacent to Tim Donelson's residence. However, this  
11 property was never transferred to the ownership of Tim Donelson.  
12 And that was confirmed by Agent Russo.

13 Bill Wilson also contributed to the purchase price of two  
14 vehicles for Tim Donelson. Tim Donelson asked Bill to do this  
15 instead of submitting an invoice to him for work that had been  
16 done with the bulldozer. And this isn't the first time  
17 Bill Wilson did this. You also heard testimony from Dean Carter  
18 that Bill Wilson bought him a Jeep instead of paying his salary  
19 for some portion of time.

20 There were also the payments to Apposite from MSO. During  
21 the government's closing, they described this relation between  
22 MSO and Apposite as Bill Wilson and Tim Donelson's effort to  
23 cover up their transactions, these money changes. It just dawns  
24 on me that cash, something that wasn't creating bank records, may  
25 have been a more effective cover up, but this is what they chose

1 to do, and I would submit because they had nothing to hide,  
2 because it was a legitimate business arrangement.

3 Now, as I mentioned, in 2008, Bill Wilson and Tim Donelson  
4 formed CSS, each of them contributed capital equipment,  
5 Tim Donelson was the one who contributed the Case bulldozer.  
6 Their arrangement was when the bulldozer was doing work,  
7 Tim Donelson would get proceeds, and if you look at defense  
8 Exhibit 113, this is a 2018 tax return prepared for CSS that  
9 lists Bill Wilson and Tim Donelson as 50 percent partners, and it  
10 also shows depreciation of that Case bulldozer -- what did I say?  
11 2008. Thank you. Regardless, it's on the defense Exhibit 113,  
12 but thank you very much.

13 On March 12th of 2019, if you look at government's  
14 Exhibit 1,000, and, again, I'm not pulling these up. If you want  
15 to keep track, that's fine. MSO purchased a John Deere 450J  
16 bulldozer from Stribling Equipment in the amount of \$58,000.  
17 This bulldozer, as we see in government's Exhibit 972, was  
18 immediately put in service, and it began depreciating it on the  
19 PVS tax returns through 2015.

20 I point all this out just to reiterate the bulldozers were  
21 real. In September of 2009, following a project that used the  
22 Case bulldozer, the CSS bulldozer, Bill Wilson sold it to  
23 Guy Hollingsworth. He came and testified.

24 And he testified that he purchased it for \$17,000.  
25 There's no evidence that the proceeds or any portion of those



1 \$17,000 was ever transferred back to Tim Donelson. It stayed  
2 with MSO.

3 So in 2010, again, Tim Donelson forms Apposite, or,  
4 however it's pronounced, and CSS is dissolved, but the  
5 arrangement between Bill Wilson and Tim Donelson is consistent.  
6 If the bulldozer's working he's getting a portion of the  
7 proceeds.

8 From 2010 until 2014, MSO or PVS made approximately six  
9 payments to -- well, not approximately, six payments there, up  
10 there, to Apposite. The Apposite invoices appear in government's  
11 Exhibit 702 and 703 and here we have the cancelled checks  
12 displayed. They're combined from government's Exhibits 1000 and  
13 1004. These payments were made from MSO to Apposite, they were  
14 done in real time as the work was being performed. The memo line  
15 on the checks match, for the most part, what appears on the  
16 invoices, and we know that the descriptions that appear on the  
17 memo lines were added when the check was written because these  
18 are copies of the cancelled checks from the TD Bank records.  
19 This income was also reflected on the Apposite tax records, this  
20 is government's Exhibits 1006 through 1009.

21 And, then, finally, we have this additional split just to  
22 sort of breakdown how the split worked between MSO and Apposite.  
23 And this is for the F&W invoices where the bulldozer was used  
24 to -- here we go. So this is government's Exhibit 922, Page 5,  
25 where we have 3,590 as one charge, and then government's

1 Exhibit 923 on Page 4 we have \$1,075. The total for that is  
2 \$4,665, and that corresponds with the Apposite invoice  
3 government's Exhibit 407, Page 3, Line 1, for \$2,335 or half.

4 And in relation to these work sites you heard from  
5 Garry Moore, this is the JEA representative. He testified that  
6 many of the companies have equipment subsidiaries to lease  
7 equipment for tax purposes. So this arrangement between PVS, or  
8 not PVS, between MSO -- or PVS and Apposite, is not out of the  
9 ordinary.

10 When you look at the contract for this JEA project -- this  
11 is government's Exhibit 986, Page 8, the Bid Specification -- it  
12 states that it was the contractor's responsibility to access  
13 these roads. These were shown to you with -- we have photos of  
14 the roads, and I believe they were also introduced. I don't have  
15 the cite right now, though, but that bid specification stated  
16 that it was the contractor's responsibility to access the sites  
17 and JEA was not responsible for the additional costs to do so.

18 Then, if you look at government's Exhibit 987, the  
19 technical specifications on Page 8, indicates that the contractor  
20 would also need to use rights of way and contemplated that there  
21 might be damage that requires repair.

22 So even though it appears as though the cause of the  
23 documents that contracted this project with JEA to go out and do  
24 these tower repairs, even though it appears that they  
25 contemplated having to repair the roads, Mr. Moore was adamant

1 that no repairs would ever be necessary.

2 Then we heard from Dean Carter who testified that he  
3 actually went to the JEA site on occasion. He wasn't there all  
4 the time. They needed to make a place to store boats. He didn't  
5 actually see work being done, but he observed that the roads  
6 needed to be repaired, and he also testified that he witnessed  
7 Tim Donelson deliver the bulldozer to an FBI project in 2015, and  
8 that corresponds with government's Exhibit 702, Page 12. So we  
9 have additional bulldozer sightings being present on projects and  
10 then ultimately being invoiced.

11 L.C. Simmons testified that, looking at, again,  
12 government's Exhibit 702, referencing the fire prevention and  
13 other MSO hunting line items. He testified that, yes, a  
14 bulldozer was used to plow a fire row, and that a bulldozer could  
15 be used to do work for the MSO hunting.

16 He also confirmed that he actually did the work on the  
17 Hamilton Plantation. That included land clearing, tree removal,  
18 road building. He also confirmed that he did work along with  
19 Bill on the Oden property that's also known as the  
20 Philips Pasture, not to be confused with the Oden property. That  
21 work was done for free.

22 He also confirmed work that he did work on the Rayonier  
23 project, again, with the bulldozer.

24 David Allen Lane, he was the bulldozer driver. He  
25 testified during Mr. Wilson's case, that he did work on the JEA

1 project with the bulldozer. He also did work at the Sweet Water  
2 Hunting Club.

3 Kevin Griffith, he was the fence builder who assisted on  
4 the Oden, Phillip's Pasture property testified that the bulldozer  
5 was there. It was on the other side of the property working its  
6 way around. The bottom line is this: Before 2010, the Case  
7 bulldozer was used to perform work during the CSS partnership.  
8 Bill Wilson and Tim Donelson split those proceeds 50/50. After  
9 2010, the John Deere bulldozer was put in place, used to perform  
10 work. Tim Donelson invoiced Bill Wilson for the work. You heard  
11 from the people that actually got their hands dirty doing the  
12 work. You heard what kind of work they did. You heard where the  
13 work was done. And you heard when the work was done.

14 Now, even after Tim Donelson left Level 3 in February of  
15 2014, Bill Wilson continued to pay Apposite for bulldozer work,  
16 and you can see that in government's Exhibit 702. There are four  
17 additional invoices after he leaves Level 3, owing \$28,000.

18 Now, MSO already had a long standing relationship with  
19 Level 3 before Tim Donelson arrived and came into the picture.  
20 In 2004 MSO, as I mentioned, signed the nondisclosure agreement.  
21 Beginning in 2005, they were awarded a series of contracts, and  
22 if you recall -- well, you probably don't recall the exact  
23 exhibit number, but defense Exhibit 147. This is an example of  
24 one of the contracts that was signed in 2008 by Ed Morche,  
25 M-O-R-C-H-E, not Tim Donelson.

1           When the government makes a point about whether the work  
2     on the invoice lines are a hundred percent accurate or match up  
3     exactly with what work was actually done, you have to keep in  
4     mind -- or I would ask you to keep in mind, this is a handshake  
5     agreement between two friends. A lot of men who testified about  
6     the work that was being done, they're coming back to the office  
7     and relaying verbally what they did.

8           Suffice it to say, specificity and detail wasn't  
9     necessarily their priority. They didn't realize that ten years  
10    later these records would be reviewed as closely as they are.

11          Generally, though, those descriptions on the invoices are  
12    pretty accurate.

13          These payments were made for -- these payments relating to  
14    the bulldozer were made for legitimate business purposes and the  
15    government failed to prove to the contrary.

16          At most, Tim Donelson had a conflict of interest while he  
17    was working for Level 3 and maintaining this side business  
18    relationship with Bill Wilson. But that's not sufficient to  
19    prove honest services fraud.

20          I'd like to move on to Matthew Kekoa LumHo and discuss him  
21    for a little bit again. Within Count 1, this is the conspiracy  
22    to commit honest services fraud, and the money and property wire  
23    fraud.

24          Now, the government argues that Bill Wilson paid thousands  
25    of dollars and gave equipment to Kekoa LumHo with the intent to

1 influence him in the performance of his official acts that would  
2 benefit Bill Wilson. And that LumHo accepted this money and  
3 equipment in return for being influenced in the performance of  
4 these official acts. That's a lot. Suffice it to say, that  
5 Bill Wilson never provided money and equipment to Kekoa LumHo  
6 with the intent to influence the performance of any official act.

7 Let's start with these payroll deposits or payments to  
8 Fidel Ramos. If you look at government's Exhibit 938, I believe  
9 this is the FrankCrum records that the government probably had  
10 them up. On February 9th, 2012, Fidel Ramos is placed on the MSO  
11 payroll, he stayed on the payroll until November 7th of 2012. He  
12 received a total of \$23,595 after taxes. There's no evidence  
13 that Bill Wilson was ever informed that Ramos was hired. There's  
14 no evidence that Bill Wilson was ever informed or knew that there  
15 was any relationship between Bill Wil- -- not Bill, between  
16 Kekoa LumHo and Fidel Ramos. This is supported by the fact that  
17 there's no employment file in evidence; unlike Natalie Capallia,  
18 that the government has argued was also receiving similar  
19 payments, she's got an employment file.

20 Moving on to the Bose SoundDock. This is government's  
21 Exhibit 906. It shows the March 31st, 2012 Apple receipt. This  
22 is the transaction. We had a little confusion that we were  
23 missing a page and I had questions about which transactions  
24 corresponded with Mr. Atwood. I think we agreed that this  
25 transaction was conducted under Barry Atwood's card and then

1 shipped to Barry Atwood's house. It came out of Mr. Wilson's  
2 credit card account, but the actual purchase was conducted by  
3 Barry Atwood,

4 Then we move on to the camera equipment. MSO received  
5 these requests between June 25th and June 26th of 2012 and filled  
6 them. That's what Bill Wilson did. He sent them a request, he's  
7 going to fill it, and send it back to you. If you look at  
8 government's Exhibit 803. This shows LumHo e-mailing Atwood the  
9 list and then government Exhibit 828, Page 16, shows Atwood then  
10 e-mailing Tyler Dalton and Bill Wilson is cc'd, and he's asking  
11 him to purchase this equipment and put it on the portal 6099.  
12 Tyler Dalton goes and purchases the equipment and sends it off or  
13 has it shipped. Bill Wilson didn't even know what this equipment  
14 was going to be used for. That wasn't his responsibility. His  
15 responsibility was to buy it and provide it. It's the same thing  
16 Ron Capallia told you, the project manager from Level 3. He  
17 didn't know what any of this equipment was going to be used for.  
18 He's creating a purchase order, making sure that it arrives, we  
19 hope, and then invoicing.

20 Now, in their opening, the government suggests that  
21 somehow Barry Atwood was going to be a back channel between  
22 Kekoa LumHo and Bill Wilson, and just with this one camera  
23 transaction. Look at all the e-mails that ended up getting sent  
24 back and forth. Add the camera into it and look at how many  
25 e-mails are getting sent back and forth. Barry Atwood wasn't a

1 back channel.

2 Bill Wilson didn't knowingly provide any money or  
3 equipment to LumHo. However, even if you believe that he did,  
4 then the most Bill Wilson can be found guilty of is providing a  
5 gratuity, not honest services fraud, because LumHo was never  
6 influenced in the performance of an official act. Any benefit  
7 that he would have received, occurred -- any benefit that he  
8 would have received would have occurred after any action that he  
9 had taken, or any imminent action to be taken.

10 So turning back to November 8th of 2007, this is when  
11 Level 3 was awarded the WITS 3 contract by GSA. At the time  
12 Bill Wilson was performing various contracts for Level 3. On  
13 November 18th of 2010, MSO entered into a master subcontract  
14 service agreement with Level 3. This is -- this puts them into a  
15 special pool of subcontractors. I think that's probably an  
16 oversimplification, but that's basically the gist of it.

17 That contract -- the purpose of that contract was to  
18 provide professional services to the GSA. That process wasn't  
19 just something that Tim Donelson would sign off on. You heard  
20 testimony that it required additional vetting. Part of that  
21 vetting process was corporate looking into finances so they're  
22 not just letting anyone on to this list of the master  
23 subcontractor agreements.

24 Now, in January of 2011 -- in January of 2011, Mr. Wilson  
25 was approached by Level 3 that a very small professional services



1 contract for him to take over, maybe one or two people at WHS.  
2 We have the -- in evidence you'll have the FrankCrum records for  
3 this person. Debra Gardner. And, this isn't something that  
4 Bill Wilson had done before -- here we go. This isn't something  
5 that Bill Wilson had done before, but as most of his professional  
6 career, he learns how to do things and he does it well.

7 So he takes this job on with a few subcontractors. It  
8 also made sense because it was generally related to telecom.

9 Now, in 2011, Level 3 took over the month-to-month  
10 contracts used for IT support related to the move to the  
11 Mark Center. So, again, small contract, they approach  
12 Bill Wilson, they had staff already in the facility, they had  
13 someone in place who already had a managerial role, Barry Atwood,  
14 so they asked Bill Wilson, is this something that you want to  
15 take over. It's slightly bigger than what he was currently  
16 working on. There may be three or four employees, but he takes  
17 it over. It wasn't necessarily in his area of expertise, being  
18 IT, but he had someone on site who could basically be a project  
19 manager.

20 Now, this occurs before the Bridge contract and before the  
21 last phases of the BRAC move. And we heard Mr. Steiniger testify  
22 that MSO -- the MSO subcontractors did a good job on this  
23 project.

24 Now, throughout the trial we heard a lot of testimony  
25 about the contract dispute between EES or ESS and Phacil, Facil

1 (phonetic.) I can't remember how to pronounce it, and this  
2 resulted in a Bridge contract being awarded to Level 3. That  
3 happened on October 20th of 2011. Now, there's some controversy  
4 about how the contract was awarded to Level 3. Defendant's  
5 Exhibit 7 shows, however, that LumHo informs Steiniger and a  
6 number of others about this -- about his communication with Level  
7 3, GSA legal, and there were discussions about how GSA legal  
8 wanted to make sure that they didn't use certain contractors,  
9 Phacil or InquisIT. It also explained how Level 3 was already in  
10 conversations with a potential subcontractor to take over the  
11 project, and this occurred before LumHo ever sent Ron Capallia  
12 any of the bid information.

13 We also heard testimony from Pamela Munford, this is the  
14 24 year old Verizon veteran who testified about the fair  
15 opportunity process. And, I would encourage to you look at  
16 government's Exhibit 302. This is the actual Verizon WITS 3  
17 appointment letter, and it specifies that letter is for or that  
18 contract, that appointment is for voice and data services, not  
19 professional services, and not for equipment that would have been  
20 required for the Bridge contract.

21 So as we're moving through this progression, you hear  
22 testimony from Willie Spivey, Spivey, about how there's 91  
23 existing positions that has to be culled down to 31 positions  
24 that they're going to retain. They're trying to decide who was  
25 going to be able to take this over. Well, MSO is already on the

1 contract. They're on site providing -- no, this is the Bridge  
2 contract. So MSO is already on site, okay.

3 They're already providing professional services.  
4 According to Steiniger, they were doing a good job. Also, MSO  
5 had the master subcontract agreement with Level 3, and, so a lot  
6 of the fair -- a lot of the best value factors are already in  
7 place for Level 3 -- or for MSO.

8 So the Bridge contract was ultimately awarded to Level 3  
9 and MSO took over. Barry Atwood was able to manage the project.  
10 They had to hire additional subcontractors. Through all this  
11 process, Spivey testified that they didn't receive any complaints  
12 about the MSO employees' performance on the Bridge contract and  
13 this is, at least in the beginning, they were dealing on  
14 one-third staff.

15 Now, three months later we have the issue with the BRAC  
16 move. That all comes to a head. MSO is already on site with  
17 this month-to-month service agreement. They have their three or  
18 four, maybe more employees, they're starting to grow because  
19 they're also handling the Bridge contract, so there's a series of  
20 three portal orders that are associated with this move out.  
21 January 31st, 2012; April 3rd, 2012; and July 24th of 2012.

22 And, again, MSO is already on site, they're doing a good  
23 job with the Bridge contract, Atwood is there to manage. It  
24 makes sense that they're there. They're not just being thrown  
25 into this situation.

1           Ultimately, Atwood in consultation with Mr. LumHo decided  
2           that they're going to use Donnie Ravas to provide the technical  
3           moving services, and you heard Mr. Ravas's testimony about how  
4           challenging that process was. He ended up having to do  
5           walk-throughs. There were meetings associated with it. He  
6           staged an overflow warehouse. He assisted with the move itself.  
7           He was supervising the movers that he had hired.

8           He also testified that he completed the work that appeared  
9           in the statements of work, and they did a good job. Steiniger  
10          testified that the MSO subcontractors provided an appropriate  
11          level of support and that there weren't any complaints.

12          Now, this version of the move out process stands in stark  
13          contrast to the testimony you heard from Mr. Jenks. This is the  
14          individual who testified when they're confronted with a number of  
15          e-mails, just denied that they were ever written.

16          It's obviously your prerogative, if you want to credit his  
17          testimony over Mr. Ravas's, but I would submit to you that  
18          Mr. Ravas's version of how this move occurred and the quality of  
19          service is inherently more accurate.

20          Now, when we look at -- if we could -- Now, Ravas  
21          testified also that Atwood participated in the planning and  
22          moving of this process -- in the planning and moving process.  
23          Atwood was basically the project manager for these various  
24          professional services. He was also supervising Ravas and his  
25          crew, and on at least one occasion he had to go track down IT and

1 help desk people to help assist with the move. Based on those  
2 job titles, I would suspect that they're MSO subcontractors, but  
3 I don't know that for certain. The point is that you'll remember  
4 government's Exhibit 1406. This is what shows the number of  
5 hours that Ravas's subcontractor movers put in, 332 or whatever,  
6 he billed \$70,000 to MSO, and then you slide over and you see  
7 what Level 3 billed the government. And that's just not an  
8 accurate description of how those -- how the \$440,000 that MSO --  
9 or that Level 3 came up with and billed the government was  
10 calculated. A little bit later I'll go into the play by play  
11 of -- or how that number gets that high, but at least at this  
12 point I wanted to point that out.

13 Now, during this same timeframe there's a total of ten  
14 additional portal orders -- so in addition to the move, there's  
15 portal orders. The portal orders are for equipment. So you have  
16 three portal orders that for moving related service, ten portal  
17 orders that are related to equipment. And these are all  
18 different equipment and installation services that would be  
19 required for the BRAC. MSO was able to provide this equipment  
20 and services. They already had infrastructure in the building on  
21 site. It made sense for them to handle it, and they also already  
22 had the contract for it.

23 The total invoice for these services that was submitted to  
24 MSO or submitted by MSO to Level 3 ended up being \$2 million, 2,  
25 million 5,000 and \$37. Do we have that?

1           The total amount that Level 3 ended up billing to the GSA  
2       was \$3,088,883. It basically corresponds to a 54 percent markup  
3       for all -- I guess all 13 of those portal orders.

4           So, I point all of these dates out to explain how it is  
5       that Bill Wilson ended up working on all of these contracts. The  
6       most important thing to remember about the WITS 3 contract you  
7       heard on the very first day from Tina LeBlanc, and that is that  
8       after the contract is awarded to Level 3, the government doesn't  
9       have any say in who the subcontractor is. So they might -- the  
10      government may not like that Level 3 is subcontracting whatever  
11      service, whatever contractor they got, but they don't have any  
12      control over it.

13          The DoD IG also wouldn't have had any authority to  
14      influence whether or not -- well, they wouldn't have the ability  
15      to influence whether a contractor was used or who was actually  
16      awarded the contract.

17          And this means that LumHo also didn't have the authority  
18      to influence the subcontracting decisions that were made by  
19      Level 3. And, notwithstanding the lack of oversight that the  
20      DoD IG had over the selection of MSO as the subcontractor on  
21      these projects, Level 3's decision to use MSO was completely  
22      justified. When the GSA decided to re-compete this contract, he  
23      actually had the opportunity to steer what in essence was a  
24      \$30 million contract to MSO, but he ended up not doing it.

25          So turning to Ron Capallia, again we're talking about the

1 conspiracy, Count 1, to commit honest services fraud, the money  
2 and property wire fraud.

3 So in relation to Ron Capallia, the government's arguing  
4 that Bill Wilson paid thousands of dollars in kickbacks to  
5 Ron Capallia in exchange for favorable treatment. However,  
6 Bill Wilson didn't need favorable treatment from Ron Capallia,  
7 and, in fact, Ron Capallia couldn't give Bill Wilson favorable  
8 treatment even if he wanted to.

9 As I mentioned in the beginning, Level 3 was -- well, the  
10 project -- the federal project management office at Level 3 acted  
11 with a common purpose, to maximize their own profit without  
12 regard to the process. And specifically what I mean by that is  
13 that Level 3 was responsible for making sure that the DAR or  
14 Mr. LumHo actually had their training, and if he didn't then they  
15 weren't allowed to submit portal orders with untrained DAR. He  
16 basically disregarded both of these responsibilities in the  
17 interest of maximizing their profits, especially during the BRAC  
18 move out and the Bridge contract.

19 The individuals who worked within the federal project  
20 management office of Level 3, the primary players are listed  
21 here, as you've listened to the testimony, clearly you've heard  
22 more names than those, but these individuals all profited through  
23 raises, bonuses, and they received raises and bonuses when  
24 profits were maximized, and they accomplished this by adding 30  
25 to 35 percent markups on the equipment or the services that were

1 subcontracted and then invoicing the government. This process  
2 was not dependent upon on any single person. It functioned  
3 without -- it functioned in the absence of any one of the major  
4 players, it functioned in the absences of anyone.

5 They were collectively in the pursuit of profit, and any  
6 of the gifts that Bill Wilson gave to Ron Capallia didn't affect  
7 that process.

8 So Ron Capallia went to work for Level 3 in 2009 as a  
9 project manager. He was supervised by Mr. Hoeymans, and then  
10 above that Tim Donelson, the leader of PMO.

11 Now, at this time Bill Wilson had already been  
12 subcontracting for Level 3 since about 2005. Ron Capallia met  
13 Bill Wilson on a project in Durham, North Carolina, and again  
14 they got along well, and eventually in 2011 Ron Capallia was put  
15 in charge of this DoD IG project.

16 Now, Bill Wilson was already on the project. He already  
17 had employees on the project. He already had a master  
18 subcontractor agreement, and, as I said, he already had the  
19 professional services contracts in place.

20 Now, Ron Capallia was ignorant of all of this when  
21 Tim Donelson told him, "We're going to use MSO." And I think you  
22 heard Mr. Capallia's testimony that he didn't understand why they  
23 were going to use MSO. And in essence it's because Ron Capallia  
24 was brand-new to this program. He also didn't participate in the  
25 subcontractor selection process. Again, MSO already had in place



1 all of the best value factors, or not all of them, but a  
2 significant number of them, that made them suitable for this  
3 contract.

4 You heard testimony from a number of witnesses about, you  
5 know, this best value selection process, so in addition to the  
6 MSA, already being on the location, having the resources, having  
7 a relationship, they wanted to make sure that you accepted all of  
8 the additional requirements of the contract, a number of  
9 different requirements.

10 In October of 2011, when discussions began about the  
11 Bridge contract, and MSO was earmarked for the project, it's  
12 because they were qualified. It had nothing to do with any  
13 behind the scenes selection or favoritism.

14 Now, there's been testimony that there should have been a  
15 fair opportunity process with their contract. The government  
16 called -- we already mentioned her, Pamela Munford from Verizon  
17 to testify about the fair opportunity process. You heard about  
18 how Verizon went back through their e-mail and they had people  
19 looking over their shoulder combing their records for one of  
20 these fair opportunity letters.

21 Now, this criticism ignores two important facts. First,  
22 Verizon didn't have the appointment that covered professional  
23 services and equipment. They only had an appointment to this for  
24 voice and data. Second, it ignored the terms of the actual WITS  
25 contract itself.

1           The government's Exhibit 301, on Page 225, specifically  
2       carves out exceptions to the fair opportunity process. If you  
3       look at the top, we have highlighted some of these exceptions.  
4       You see one of the exceptions on the left lists: "Unusual  
5       urgency that will lead to unacceptable delays," and to the right  
6       you see an example of that would be: "Immediate short term need  
7       arising on short notice."

8           This would explain why no one in the senior GSA or DoD IG  
9       seemed at all concerned about the fair opportunity process. It  
10      would explain why Ron Capallia and Kekoa LumHo all of a sudden  
11      panicked because they didn't have a form in a file somewhere.  
12      They had no idea what was even in the contract.

13          If you look down below on the left-hand side, it talks  
14      about another type of exception where you have a contract that  
15      could potentially be extended. And if you then look on the  
16      right-hand side it specifically lists that there's an agency move  
17      going on.

18          Now, again, government contracts are confusing, I didn't  
19      want to speculate about what type of contract was already in  
20      place and whether or not that qualified for that left-hand  
21      column, but certainly moving services seems to fit into one of  
22      those exceptions. But certainly these sort of last minute  
23      situations do.

24          So the Bridge contract resulting from the process --  
25      protest required that all these existing contractors leave, and

1 that certainly fits the description in this exception list. This  
2 is also another justification for why MSO would receive this  
3 subcontract. It was warranted, and it had nothing to do with  
4 Ron Capallia.

5 Now, early in 2012, you have the last phases of the BRAC  
6 move. It began with -- the BRAC began to ramp up the moving  
7 services were kicking in again. On January 31st of 2012, this is  
8 when you have the first in the series of portal orders that we've  
9 already talked about.

10 These orders were issued with CLINs, and you heard  
11 probably for the last four days, maybe longer, about how the  
12 CLINs don't match the services that were provided.

13 So MSO had previously been awarded this contract prior --  
14 again prior, to Ron Capallia's involvement on the contracts, so  
15 the iPad that Bill Wilson purchased on that same day, January  
16 31st, 2012, the first item of value that Ron Capallia received,  
17 had nothing to do with this portal order. The portal order  
18 process goes on between the government and Level 3. You heard  
19 testimony that MSO isn't trained, they're not supposed to be  
20 trained on this portal order process; Seana Gilliland told us  
21 that.

22 The CLIN codes don't appear on the purchase orders. They  
23 were issued to MSO. These CLIN codes don't appear on the  
24 invoices that go back to the government. The purchase  
25 requisition or the portal orders and the purchase requisitions

1 that go on back and forth between the government and Level 3,  
2 copies of those aren't provided to MSO, certainly none of it was  
3 recovered in any of their project files. The government argued  
4 in their op- -- closing that somehow Bill Wilson, Kekoa LumHo,  
5 and Ron Capallia all needed each other in this process. That's  
6 absolutely not the case. Kekoa LumHo and Ron Capallia or any of  
7 the other program managers within Level 3 are who was needed for  
8 this process, but certainly Ron Capallia was superfluous.

9 Now, the first portal order is portal order 5631. This  
10 occurs, like I said January 31st. This uses the CLIN code, cable  
11 installer. So we'll put up the -- so here are the -- yep, that  
12 was right. All right. So portal order, and if we look at the  
13 description, all right, obviously it said, "Cable Installer,"  
14 right. If we're looking at the document on its face, we're not  
15 just looking at this little square where it says description.  
16 We're looking at the document, and on the document I see, "Order  
17 file attachment." And it lists, "Network removal at 400 Army  
18 Navy Drive." And then you look up, "Purchase order file  
19 attachment," same thing. It's listed in two places. So then if  
20 we go to the purchase orders, this lists the project as Bryce --  
21 or Project Bryce, who knows what that is, maybe it's a nickname,  
22 but look at MSO. This -- so the portal ord- -- the purchase  
23 order, this is what's prepared by Ron Capallia, okay. It doesn't  
24 even match what's on the description in the purchase order, but  
25 look what MSO does. For DIG move out, so even though the

1 purchase order that they get has Project Bryce, MSO is still  
2 invoicing for the work that they did.

3 After they send the invoice to Level 3, and MSO is out of  
4 the process. So let's go to the next portal order. This is  
5 5890. This is April 3rd, 2012. Again, the CLIN is, cable  
6 installer, we're looking at this document on its face, so we're  
7 not just looking where it says description. You look up and in  
8 the middle of the page it says, "Building clean out," and then  
9 you look in the upper left-hand corner under PON and it actually  
10 has in the order summary, "Move out, phase two."

11 That matches the description that appears on the service  
12 order request. So then we go to the purchase order.  
13 Ron Capallia, "Project move out phase two." You got it right.  
14 Then we look at the two invoices that are associated with this,  
15 "Project" move out phase two," "Project move out phase two."

16 Purchase order 5901. We're looking at the description,  
17 "Application Project Manager," and then the file attachment,  
18 "Niksun." You go over to their service order request -- the  
19 service order request -- I can't read that, "Professional  
20 Services, After Hours Installation." Go to the purchase order,  
21 look at the -- so here we have the PO order, "Niksun phase two,"  
22 up above that, "Niksun phase one," invoices from MSO, they match  
23 the portal orders, and the requestor is Ron Capallia. If we can  
24 go to the next one, "Cable Installer," is in the description.  
25 Under the PON in the upper left hand corner it says, "Tech

1 Support." If we go to the purchase order, it says,  
2 "Ron Capallia, Apple Server and Samsung install" is what it reads  
3 on the purchase order, and that corresponds with the invoice.

4 So as we scroll through these, we see that the invoice  
5 that's being generated by MSO matches the purchase order.  
6 After -- well, before MSO is involved, it doesn't necessarily  
7 match. After MSO is involved, between the purchase order and the  
8 invoice, it matches. Where are we? Go ahead. All right. Go  
9 ahead. One more. All right. Go ahead, one more.

10 So this is an example, 6099, again, "Cable Installer,"  
11 "Apple Lenovo Brackets." In the middle, doesn't match the  
12 service order request form. Go to the purchase order. Purchase  
13 order is what's sent to MSO. Apple 2, that matches the invoice  
14 that's prepared by MSO, and the interesting thing about this  
15 portal order is that it's -- we'll go back one. The interesting  
16 thing about this purchase order is that it is delivered to Leroy  
17 Firnell. So Ron Capallia, not signing this one, yet someone else  
18 in the process continues.

19 So I mentioned that earlier that the government  
20 Exhibit 1406 is a little bit misleading. If we could bring up  
21 the chart that we have.

22 Okay. So this is what I was talking about. If you look  
23 at portal order number 5631, we see the amount billed to the  
24 government. That's 44 thousand -- \$442,501. The amount that was  
25 billed to Level 3 from MSO was \$295,000. What appeared on

1 government's Exhibit 1406 was \$70,000. That's what Ravas billed  
2 MSO.

3 Included in that chart is also a description of the work  
4 that was done. The only description that appears in that chart  
5 is 332 hours and change of moving services. Obviously, it  
6 doesn't take into account the additional work that Ravas did.  
7 Obviously it doesn't take into account any of the additional work  
8 that MSO employees did, or Barry Atwood did, or Dean Carter did  
9 who testified that he also assisted with that project -- or at  
10 least with the planning for that project.

11 So looking at this we can see that Level 3 is not the  
12 victim in this case. They subcontracted work to Level 3. They  
13 put almost a 50 percent markup on it, and then billed it back to  
14 the government. And there was almost zero risk of any sort of  
15 loss, and they stood to make a small fortune.

16 Now, looking at the portal orders on their face, the  
17 description in that small box as we went through a couple of  
18 them, is incorrect. It doesn't describe what was actually being  
19 provided.

20 It's important, though, as we looked at some of the  
21 examples, that those descriptions appear in other places, and  
22 while these portal orders may be inconsistent, that doesn't  
23 necessarily make them false or fraudulent. It just doesn't make  
24 sense that Ron Capallia or any of the people who are generating  
25 these portal orders would intentionally be submitting these false

1 orders and including all these attachments that describe what was  
2 actually being done, and then putting the title in other places  
3 on these purchase orders. It just doesn't make any sense.

4 It does highlight, though, that even when another project  
5 manager is making an entry in this system, they're doing it  
6 exactly the same way as Ron Capallia. It doesn't matter who's  
7 doing it because they're interchangeable, and again, this  
8 suggests that Ron Capallia isn't necessarily new to this process.

9 THE COURT: Mr. Stewart you're at about 75 minutes just so  
10 you know.

11 MR. STEWART: Okay. Thank you.

12 Mr. Capallia, Ron Capallia testified that he had a  
13 conversation with Bill Wilson about the way that he was filling  
14 these documents out, the inconsistent CLINs but that's all they  
15 are, they're inconsistent, they're not false, and there's no  
16 reason to expect that that would have raised any kind of alarm  
17 bell with Bill Wilson, again, because he hasn't been trained.  
18 And when he replied he always included an accurate description.

19 Now, Ron Capallia didn't have any role in pushing these  
20 orders through to MSO either. If he didn't do it, someone else  
21 would do it. And we know that through various e-mails with the  
22 DoD IG where they're actively trying to get these different  
23 equipment purchased. So in regard to the construction proce- --  
24 the construction projects, this is -- in addition to the  
25 professional services, we see how Ron Capallia also is not



1 steering construction work to MSO. There's e-mails where  
2 they're -- there's one project where they're asking, who -- would  
3 you like Woodlawn on the D.C. project. And it's, well, here we  
4 go -- there's -- I like Woodlawn, MSO, Highlander over Woodland,  
5 so they throw MSO in there but that's definitely not a ringing  
6 recommendation.

7 We also hear -- we also heard testimony from Capallia that  
8 all of these projects were going to MSO and we have these PMO  
9 slides that show some of the contracts that he was actually  
10 working on. If you look at the bottom left corner were Woodlawn,  
11 so we know that all of the contracts that he was receiving  
12 weren't MSO.

13 The other -- we also had the subcontractor tracking sheet.  
14 This gives us a good understanding of what the ratio of contracts  
15 were between some of these different contractors. So at the top  
16 we can see on the right-hand side, there's notations that say,  
17 "Do not use these particular contractors for professional  
18 services." In the middle we have MSO with eight contracts. At  
19 the bottom we have Woodlawn with 16 contracts. And you can go  
20 look at this defense Exhibit 137A for yourself and review it.  
21 It's multiple pages, but of the total of 92 subcontractors,  
22 they're -- Woodlawn has more than MSO. So that stands in  
23 contrast to the testimony that both Scotidas and Capallia gave  
24 you about the funnel of contracts going directly to MSO and  
25 nowhere else.

1           So this just highlights the fact that Bill Wilson was  
2 getting contracts before Ron Capallia was assigned to the DoD IG,  
3 he was getting contracts while he was assigned there. And even  
4 though he didn't have any authority to steer these contracts to  
5 MSO, we did hear testimony about how he tried to take Bill Wilson  
6 to this NASA facility and then had the qualm anyway to submit a  
7 contract but just never got around to it.

8           So in relation to this whole process of bidding contracts  
9 for -- to MSO -- or funneling them to MSO, we heard from  
10 Dean Carter. He talked about how he was involved in actually  
11 submitting some of these contracts or bids to Level 3. He  
12 testified about how the bids that they prepared, contrary to what  
13 Scotidas testified to, they tried to provide competitive bids.  
14 They did use the flat fee pricing. They did that because they  
15 needed to build in contingencies and he also testified that that  
16 was the industry standard.

17           He testified, as well, that they didn't receive contracts  
18 that they didn't bid. He also testified that they didn't receive  
19 contracts for all the bids that they submitted.

20           So clearly these gifts that Ron Capallia was receiving  
21 didn't affect the way that he conducted himself in work.

22           It was also clear that Bill Wilson's intent wasn't to  
23 receive favorable treatment from Ron Capallia. He considered him  
24 a friend. And we know that Bill takes care of his friends. We  
25 heard testimony about that. We heard about donations to the

1 Camp Landing Museum for \$30,000. \$5,000 to the families whose  
2 children had passed away. There's the Thanksgiving turkey,  
3 barbecue. He gave Sandy Darden a smoker. He gave Dean Carter a  
4 Jeep. He's loaned his equipment to neighbors. He did work for  
5 free for Barton Odon (phonetic.) And he also helped with  
6 maintaining the roads for these different hunting clubs.

7 The payments to Natalie Capallia continued over a year  
8 after Ron Capallia resigned from Level 3. He resigned on  
9 February 21st of 2004, and the payments continued into June or  
10 July of 2015.

11 The day that Ron Capallia resigned, Bill Wilson flew him  
12 down to Orlando, he drove from Jacksonville to Orlando, picked  
13 him up, brought him to Daytona.

14 He gave him a job. He put Ron's kids on his healthcare.  
15 He gave him a place to stay and they started the company  
16 together.

17 Now, the one thing I have trouble squaring are -- My  
18 recollection is that relatively early on in this process is when  
19 the threat allegedly happened, when Bill Wilson threaten  
20 Ron Capallia and his family. It doesn't make sense to me that  
21 they're still receiving money from Bill Wilson, and they didn't  
22 leave. I just don't understand that.

23 Before Bill -- before Ron Capallia resigned, though, if he  
24 asked Bill for something, Bill would give it to him. If he  
25 needed something, he got it. He started with the iPad for work,

1 there was the car when he was going to lose his work car. His  
2 family needed a computer. That turned into a computer and iPads  
3 for the kids. He was -- iPads for the nieces. He was going to  
4 take a -- Ron was stressed out from work so that turned into a  
5 vacation. He did all of this for someone who couldn't do  
6 anything for him in exchange, because he didn't have any  
7 authority to do anything.

8 Ron Capallia couldn't provide favorable treatment to him  
9 because he didn't have any favorable treatment to provide. And  
10 despite all of that, Bill Wilson kept on paying for him to live  
11 with him and support him for an additional year.

12 So I just wanted to briefly touch on some of the  
13 additional charges, other than -- or beyond the conspiracy  
14 charge.

15 The honest services fraud in relation to the government, I  
16 just wanted to reiterate that there weren't any bribes to LumHo.  
17 And in addition to taking any action -- there weren't any bribes  
18 to LumHo and that was in addition to not taking any action in  
19 favor of MSO. In fact, he took action against their interests.  
20 He complained about prices, he got prices reversed. Most  
21 importantly, though, when it came right down to it, there was the  
22 AIS-MSO bid to take over where the Bridge contract was going to  
23 leave off, and he didn't get it. What all of this sounds like is  
24 if you believe that -- it's really just hard to make any sense  
25 out of it.

1           The only thing that really makes any sense is the  
2 relationship between Tim Donelson and Bill Wilson. That was a  
3 contract, 50/50, you could understand it. It made sense, and it  
4 went forward in time.

5           The relationship between LumHo and Bill Wilson just  
6 doesn't make sense. There's -- all of the benefits that could  
7 have been given to Bill Wilson, he already had them by the time  
8 that anything was being provided to LumHo. By the time his dad  
9 was on the -- by the time his dad was on the payroll, he already  
10 had the Bridge contract, he already had the month-to-month  
11 contract. Everything was in the pipeline for him. The only  
12 explanation for -- the only potential explanation, is that he was  
13 receiving a gratuity, that Bill Wilson was giving LumHo a  
14 gratuity.

15           Now, in that same logic, the payments that were going to  
16 Capallia, Capallia couldn't give him any more. And so even after  
17 he left he continued paying. The only thing that makes sense is  
18 that Bill Wilson was giving the Capallia's a gratuity for things  
19 that had already happened. Now, the gratuity instruction only  
20 applies to LumHo, but the logic applies the same, to Capallia.  
21 But it's not sufficient to find him guilty of the honest services  
22 fraud.

23           THE COURT: And the gratuity applies to Mr. Wilson, you  
24 meant to say, right?

25           MR. STEWART: Right.

1 THE COURT: Right. Okay.

2 MR. STEWART: The same logic applies to -- the same logic  
3 applies to Mr. Donelson. You have these payments that are going  
4 on, you have began -- before the 2010-2014 window, they continue  
5 after, maybe there's a conflict of interest, maybe there's a  
6 gratuity, but regardless it's not sufficient to find him guilty.

7 So with that, ladies and gentlemen, I would just ask that  
8 you return a verdict of not guilty for Mr. Wilson. Thank you.

9 THE COURT: All right. Thank you, Mr. Stewart.

10 All right. Let's take another ten minutes, and then we'll  
11 come back and hear closing arguments on behalf of Mr. LumHo. All  
12 right. You're excused. Thank you.

13 (Jury out at 5:18 p.m.)

14 THE COURT: Yes, sir.

15 MR. SALVATO: Sorry, Your Honor. Just wondering about  
16 timing.

17 THE COURT: We're going to finish up tonight.

18 MR. SALVATO: That's what I figured.

19 THE COURT: Yeah.

20 MR. SALVATO: The jury's okay. We're going to push timing  
21 but if we're going to finish up tonight with everybody that's  
22 good with us. We obviously don't want it broken up between.

23 THE COURT: No problem. No, we'll finish, and you're  
24 going to keep your rebuttal short and sweet.

25 MR. BURKE: I'll try. I'll try to keep it short, Your

1 Honor.

2 THE COURT: All right. I know Mr. Amolsch is going to  
3 keep his closing.

4 MR. AMOLSCH: I'm going to speak so fast. That he won't  
5 have a chance to keep up with Wallace until he jumps out of that  
6 chair.

7 THE COURT: He may. We have one other issue. I'll get an  
8 update on it, but our soccer referee, of course, has an event in  
9 New Jersey that he did mention in the voir dire. He's made some  
10 noise about wanting to be excused in lieu of the other alternate  
11 that we have. I don't have a position on that, and I certainly  
12 will require him to remain here, but I wanted to let you know,  
13 and he hasn't said anything in the last half a day, but he had  
14 mentioned it a couple of times.

15 MR. SALVATO: He seems a little checked out to me, just in  
16 his body language. I wouldn't have any problem with the  
17 alternate coming in. He's spinning his chair and looking at the  
18 wall and we can take that a couple of different ways, but -- I  
19 don't want the guy sitting here when he's completely  
20 disinterested.

21 THE COURT: Well, talk about it and let me know your  
22 position, and I'll get an update on whether he's still making any  
23 noise.

24 MR. SALVATO: And Your Honor, just for future planning,  
25 this isn't going to affect anything at all. But I have two

1 matters in Loudoun Circuit Court tomorrow that I definitely need  
2 to be there, one's a bond revocation that came up suddenly,  
3 another one, a Judge gave me a nice extension that I need. So  
4 one of us will be here, no matter what, but don't hold up any  
5 questions or verdict or anything like that if both of us are not  
6 here.

7 THE COURT: All right. All right. Thank you for letting  
8 me know. All right. We're in recess.

9 (Thereupon, a recess in the proceedings occurred from  
10 5:20 p.m. until 5:34 p.m.)

11 THE COURT: Do you want to keep the -- Mr. Strasberg.

12 MR. BURKE: I think so. Yes. We are taking an unnecessary  
13 risk by excusing a juror when we still have a ways to go.  
14 Absolutely we should keep him.

15 THE COURT: Okay. We have unanimity, there's always a  
16 risk, so we'll leave things as the way they are. He hasn't  
17 mentioned it in the last day, so maybe he's given up, so ready  
18 for the jury?

19 MR. AMOLSCH: Yes, sir.

20 THE COURT: Mr. Burke, depending on how long Mr. Amolsch  
21 goes we may go right into rebuttal without another break.

22 MR. BURKE: Okay. I will do my absolute best to keep it  
23 short.

24 THE COURT: All right. I just wanted to let you know in  
25 case you were expecting a break.



1 MR. BURKE: I want to get done as soon as everyone else as  
2 well. As soon as possible.

3 (Jury in at 5:36 p.m.)

4 THE COURT: All right. Please, have a seat. Mr. Amolsch.

5 **CLOSING ARGUMENT ON BEHALF OF DEFENDANT KEKOA LUMHO**

6 MR. AMOLSCH: Yes, sir. May it please the Court, ladies  
7 and gentlemen, it has been a long two and a half weeks. I asked  
8 you at the beginning to please take notes and pay attention, and  
9 I thank you for doing that. We could not be doing this without  
10 you. It's been a grind on all of us, and so I thank you.

11 This is the last time that I get to talk to you. This  
12 will be it for me. And so I want to use this time to just talk  
13 directly to you like a normal person, like not a lawyer, and just  
14 try to distill down the last two and a half weeks of trial  
15 testimony into about the hour and a half or so that I have here,  
16 and this is not an easy task as you might imagine, especially  
17 with all the jargons and abbreviations you've heard over the last  
18 two weeks. So by DoD, and OIG, and GSA, and DCIS, and WITS, it  
19 is enough, I would think to make someone mental trying to keep  
20 all that stuff in their head. I've been working on this case a  
21 long time and I still don't always know what those things stand  
22 for, so I'm going to try to do my best to break it down the way I  
23 see it without using any abbreviations I don't have to so I know  
24 that we're all talking about the same thing. And I'm also going  
25 to show you a few slides, but I'm going to do it with as few

1 slides as possible.

2 The first thing we all need to recognize and remember is  
3 that the government's theory in this case is the result of their  
4 efforts to try to piece together events that happened almost ten  
5 years ago. This started, just for reference sake, during I think  
6 the first Obama Administration, that's how long ago this  
7 happened. When for a brief period of time Kekoa LumHo, an IT  
8 professional by training, was asked by his boss to work with a  
9 contract called WITS.

10 He didn't ask for this responsibility. He didn't want  
11 this responsibility. He didn't particularly want the job on top  
12 of all of his other jobs. But his colleague Tommy was out on  
13 medical leave it had been Tommy's responsibility so Kekoa stepped  
14 up and said, "Yes, I'll help," and this was in March of 2011.

15 But according to the government, after Kekoa reluctantly  
16 agreed to work with WITS while Tommy was out he saw an  
17 opportunity, an opportunity to seize control over the WITS  
18 contract so he could, on his own with no oversight, show  
19 especially favorable treatment to Bill Wilson by secretly  
20 submitting orders to a company called Level 3 so that Level 3  
21 could then send those order to Bill Wilson. And what is the  
22 government's theory about why Kekoa went through all this work  
23 and all this effort to seize control, to be secret so that Level  
24 3 could send them to Bill Wilson, because, according to the  
25 government, Kekoa was being bribed by Bill. And the bribes were

1 as follows for all his work: A \$3,500 camera and lens, a \$350  
2 Bose SoundDock, and about \$14,600 paid to Kekoa from -- went to  
3 Kekoa from his father-in-law Fidel Ramos's account over about a  
4 month period.

5 He did all that for that. That in a nutshell as best I  
6 can tell is what this case is about for Kekoa.

7 Now, based on this somewhat tortured theory of events that  
8 happened a decade ago, the government has indicted Kekoa on 11  
9 counts, one count of conspiracy, three counts of wire fraud, five  
10 counts of false claims, one count of accepting a bribe, and one  
11 count of making a false statement on his financial disclosure  
12 form.

13 Felony charges which are all based on the government's  
14 theory that it can prove to you beyond a reasonable doubt that  
15 Kekoa was not acting by mistake or by misimpression, that he was  
16 not acting in good faith, but rather was acting with criminal  
17 intent to defraud the government willfully with the knowledge  
18 that his actions were illegal.

19 That Kekoa while in his official capacity as a government  
20 employee actively betrayed the public trust because he was being  
21 bribed, because he was on the take, because he was really taking  
22 bribes to show Bill Wilson favorable treatment.

23 Now, if they can't show that to you, if they can't prove  
24 that to you beyond a reasonable doubt that he was taking bribes  
25 to show favorable treatment to Bill Wilson, then the rest of it

1 all crumbles because it's all based on that premise, all based on  
2 that idea.

3 Now, before we get into the actual charges against Kekoa  
4 and what the government has to prove in more detail, I want you  
5 to think about what I just said, that at bottom, is what the  
6 government has to prove to you, not for an innocent reason like a  
7 mistake, not for an innocent reason like bad judgment, but he was  
8 actively working for Bill Wilson when he should have been working  
9 for the American people because he was being bribed to do so.  
10 And if they can't prove that, everything falls apart.

11 So this question: Why did Kekoa take the actions he did?  
12 Was Kekoa acting in good faith or was he acting with the intent  
13 to deceive? It defines the government's entire theory of  
14 prosecution. Because this case has never been about whether the  
15 government acquired moving services with a cabling invoice.  
16 That's easy. You didn't need to sit here for two and a half  
17 weeks for that. This case is now, and has always been about, why  
18 did the government require moving services with a cabling  
19 invoice. That's why. The why in this case is everything.

20 Because as his Honor Judge O'Grady has instructed you, it  
21 is not enough for the government to prove that Kekoa submitted  
22 invoices that are internally inconsistent or were inaccurate.  
23 The only question that matters is whether the government has  
24 proven to you by beyond a reasonable doubt that those invoices  
25 were returned to Level 3 not for an innocent reason, not for

1 mistake, because Kekoa intended to defraud the government because  
2 his loyalty had been purchased by Bill Wilson.

3 So let's talk a little bit about, "Proof beyond a  
4 reasonable doubt." This is a phrase you've seen and heard  
5 probably a thousand times in your life, TV, movies radio, you've  
6 heard it so often I'm wondering if it's possible the meaning has  
7 become lost on everyone, that it's become just another phrase  
8 that gets thrown around in crime shows. It is not a throw away  
9 phrase. You can't let it become something that you just say and  
10 hear.

11 Proof beyond a reasonable doubt, is a bedrock principle  
12 upon which our entire criminal justice system functions. It  
13 means you cannot -- you may not convict, it means you may convict  
14 only when there is no longer any reasonable doubt that Kekoa is  
15 guilty. It is in a very real sense one of two ideas that inform  
16 how you need to understand everything else that's going on.

17 Now, it would be nice if I could just tell you what beyond  
18 a reasonable doubt is, but I can't define it for you in the sense  
19 that I can't tell you what is or is not proof beyond a reasonable  
20 doubt. That's something you need to define for yourself, so  
21 while I can't tell you what it is, I can tell you a little bit  
22 about it.

23 But to really understand beyond a reasonable doubt, you  
24 first need to understand the other bedrock principle upon which  
25 our entire system rests, which is the presumption of innocence.

1           The presumption of innocence as His Honor instructed is  
2           Kekoa's by right. The presumption of innocence is the benefit of  
3           the doubt given to anyone who has been charged with a crime. The  
4           presumption of he's innocent unless and until you decide  
5           otherwise.

6           The presumption of innocence is such a powerful thing that  
7           the law allows you to find Kekoa guilty -- not guilty based  
8           solely on that presumption alone, with nothing more. And the  
9           presumption of an innocence means you must presume from the start  
10          that what you're seeing and what you're hearing about Kekoa  
11          are -- reflect innocent actions taken by an innocent man. That  
12          is the presumption of innocence.

13          And that presumption changes only when the government can  
14          overcome this presumption by proving it to you by proof beyond a  
15          reasonable doubt. That Kekoa's actions were not innocent but  
16          that rather -- innocent man acting for reasons but a guilty man  
17          acting for guilty reasons. This switching of the equation from  
18          innocent to guilt, the overcoming of the presumption by proof  
19          beyond a reasonable doubt is their burden. It's their burden  
20          alone. Kekoa as he sits in that chair is an innocent man. Kekoa  
21          has no obligation in this case. He doesn't have to prove that he  
22          isn't guilty, he doesn't have to prove that he's innocent, he  
23          doesn't have to prove he acted in good faith, he has no  
24          obligation to prove anything to anybody.

25          These are the government's accusations, and it's up to the

1 government to overcome the presumption of innocence by proving to  
2 all of you, every one of you, that he's guilty beyond a  
3 reasonable doubt.

4 And what is reasonable doubt? Well, it's the highest  
5 legal standard we have. It's the highest legal standard maybe in  
6 any society, it's the most difficult burden of proof we have in  
7 this country. Maybe any country, and that is the way it is  
8 supposed to be because in criminal cases, the stakes are the  
9 highest.

10 Kekoa is not on trial here for his money. He is not being  
11 sued for causing a car accident or something like that. If that  
12 were the case the burden of proof would be different.

13 Preponderance of the evidence, slightly more than 50 percent.

14 But Kekoa is not on trial for a car accident. He is -- no  
15 one is trying to take his money, the stakes are far higher than  
16 that. Kekoa is on trial for 11 felonies, which if convicted will  
17 follow him around for the rest of his life with ramifications  
18 that would be life altering, loss of Civil Rights.

19 MR. BURKE: Objection.

20 THE COURT: Sustained.

21 MR. AMOLSCH: You remember Ron Capallia. You heard his  
22 testimony and how he is trying to deal with the fact that he  
23 pleaded guilty to felonies.

24 So this is serious business, the most serious legal  
25 business there is, and I ask that you treat it that way. You are

1 the guardians in this case, the checks against the government's  
2 enormous power in felony cases. You're the only ones in the  
3 position to hold them to their burden of overcoming Kekoa's  
4 innocence by proof beyond a reasonable doubt. The highest burden  
5 we have.

6 Which brings us back to the essential question, and the  
7 only question that matters; Kekoa's intent. And the question for  
8 each of you is whether the government has done their job. Or is  
9 it possible, after you consider all the alternate testimony and  
10 all the documents in this case, that there are other  
11 possibilities, that Kekoa submitted those invoices not because  
12 he's being bribed by Bill Wilson, but that he did it in good  
13 faith for an innocent reason, like because his bosses, or their  
14 bosses all told him it was okay, because he was it was a crazy  
15 time, everyone was desperate and everyone was just scrambling to  
16 get by, because he relied on WITS, WITS expert at Level 3,  
17 Ron Capallia, to keep him straight. Because he relied on Matthew  
18 Steiniger and Tommy Carlyle to keep him on track. Because he  
19 didn't really understand how important it was to be precise,  
20 because he was an untrained IT tech working with a 5,000 page  
21 government contract for the first time.

22 Could all of those reasons have been why Kekoa submitted  
23 the invoices? Could any of those reasons have been why he  
24 submitted the invoices? Of course. Because Kekoa could have  
25 submitted those invoices for any one of those innocent reasons,



1 because he could have been acting in good faith. The only  
2 possible conclusion is that the government hasn't met its burden,  
3 not by proof beyond a reasonable doubt. And there's only one  
4 possible verdict because of that, and that's not guilty.

5 So as you think about Kekoa's intent, there's something  
6 else that I ask you to think about. Now, in these kinds of cases  
7 not everyone is treated -- the system doesn't view everybody  
8 equally. There are those witnesses for the government, there are  
9 those on the outside. And when you're on the outside, and the  
10 government machine gets fixed on you, well, that's about the  
11 worst thing that can happen to anybody.

12 Let's first talk about Level 3. Now, Level 3 is firmly on  
13 the inside of the government contracting world. They're cemented  
14 in place making a lot of money every year selling goods and  
15 services to government.

16 And because Level 3 is on the inside of the government  
17 contracting world and has been for so long, they are able to spot  
18 weaknesses in the system, and in WITS they found the perfect  
19 spot.

20 Now, for just a second, set aside CLINs and all those  
21 other -- that technical jargon you've heard about over the last  
22 two weeks, and think about what you've learned about the  
23 craziness of the WITS contract in 2011 and 2012.

24 As you heard, WITS is a billion dollar plus contract, and  
25 Level 3 got itself appointed as one of only two vendors able to

1 get access to that WITS money. Verizon was also on the WITS  
2 contract, but as you heard Ms. Watkins tell you, they weren't  
3 really able to provide the services that the Inspector General  
4 needed in 2011 and 2012, so Level 3 had the field pretty much to  
5 itself.

6 Now, whoever wrote the WITS contract also designed it so  
7 that only one person could actually place the orders needed to  
8 get the WITS money, the DAR, the designated area representative,  
9 and GSA, sorry about the jargon, GSA the government agency  
10 overseeing the contract did make WITS training mandatory so DARs  
11 like Kekoa would actually know what they're doing. But after GSA  
12 made the training mandatory, did GSA do anything else? Nope.  
13 They checked out.

14 You remember Tina Lane. She was the very first witness  
15 called by the government, LeBlanc, sorry.

16 THE COURT: Mr. Lane?

17 MR. AMOLSCH: The GSA official overseeing the WITS  
18 contract, Tina LeBlanc, the very first witness called by the  
19 government. She was called to explain to you how it all worked,  
20 and she couldn't tell you about the WITS training other than it  
21 was supposed to happen. She had no idea what the training was,  
22 what was covered, if GSA even kept records on the training.

23 She told you GSA only really randomly and periodically  
24 reviewed the WITS invoices that came in any way, and they just  
25 paid them, even when the inconsistencies or inaccuracies were

1 obvious on the face of the documents like in this case.

2 The only conclusion to draw, GSA didn't really care about  
3 the training. GSA didn't even provide the training. GSA  
4 outsourced the WITS training to Level 3, the company which exists  
5 to sell things and to sell things to the government.

6 So if you're Level 3, and you have Kekoa, an IT guy with  
7 no contract experience at all, and no WITS training period,  
8 working for the first time with any kind of government contract.  
9 You've got a government agency in a jam with countless needs, no  
10 formal budget because they are on a continuing resolution but  
11 with access to WITS money. You've got Tim Donelson, who by all  
12 accounts seems to be a bully, a very difficult man, Level 3's  
13 head of government contracting group, who as Ron Capallia told  
14 you, whose guiding corporate principle seems to be taking WITS  
15 money is just a matter of passing the red tape test. And you've  
16 got Ron Capallia, Donelson's underling, and Kekoa's trusted  
17 contact on the WITS contract. Ron's livelihood depends on WITS,  
18 and Ron up charges the government at every opportunity because  
19 Ron is greedy.

20 So really, are any of us really shocked that Level 3,  
21 Tim Donelson and Ron Capallia somehow never managed to get Kekoa  
22 trained on WITS? Despite their obligation to do so they never  
23 managed to get him trained on the importance of giving Verizon a  
24 fair opportunity. Never managed to get Kekoa trained on how the  
25 contract actually worked. There's no chance they simply

1 overlooked this. There's no chance this happened by accident.  
2 They liked it that way, and they kept it that way, and as long as  
3 Kekoa didn't really know what he was doing, and as long as  
4 Ron Capallia could keep the hook in, the WITS money would keep  
5 rolling in.

6 And as you saw from those e-mails, Ron Capallia made sure  
7 that his bosses at Level 3 knew exactly how much WITS money was  
8 coming in. With all of their corporate infrastructure and  
9 expense accounts and yearly bonuses, do you think they had no  
10 idea what was going on with WITS? Of course they knew. They  
11 probably saw the numbers and loved it.

12 And Ron Capallia, again, made sure everybody knew exactly  
13 how much money he was making off WITS. You remember the invoice,  
14 the e-mail, two exclamation points from Ron Capallia after  
15 another WITS order.

16 Now, sure, Ron Capallia and Tim Donelson were charged and  
17 Ron pleaded guilty, but you heard how that happened. Level 3  
18 left with their big, firm lawyers in D.C. saw the writing on  
19 the wall --

20 MR. BURKE: Objection.

21 THE COURT: Sustained. That's not in evidence.

22 MR. AMOLSCH: It is in evidence.

23 THE COURT: Not the way you've characterized it it's not  
24 in evidence. Let's move on.

25 MR. AMOLSCH: Tim Donelson --

1 THE COURT: Take that down, okay.

2 MR. AMOLSCH: Tim Donelson and Ron Capallia were in a  
3 room, and Tim Donelson came out and said, "We're screwed." And  
4 after that, they're the ones who get prosecuted.

5 As you think about Kekoa's intent in using the WITS  
6 contract, remember Ron Capallia. He was Kekoa's contact and  
7 advisor with Level 3. He's the one who pleaded guilty in 2018.

8 Ron's answer to every question as he told you to whether  
9 it was okay to use WITS, no matter what the question, it was  
10 always, yes. And Ron was very clear with you about how those  
11 WITS orders were processed. Ron filled out the service orders  
12 himself ahead of time for Kekoa or Tommy Carlyle. Ron picked the  
13 price, Ron picked the CLIN, Ron wrote the remarks. And when  
14 asked about the inconsistent information in the orders by Kekoa,  
15 he told him the only thing that mattered was whether the  
16 government got what it was expecting.

17 Ron Capallia was also very clear with you that he did  
18 exactly what Tim Donelson told him to do. Tim Donelson as you  
19 will remember was Capallia's boss, and Donelson told Ron, as far  
20 as WITS went, every order went to Bill Wilson. No exceptions, no  
21 questions asked, no matter what. And this was the system in  
22 place long before Kekoa submitted the invoice for the move, which  
23 is the first move -- which is the first invoice in the  
24 indictment.

25 Capallia also told you that Donelson signed his

1 performance evaluations, determined his salary, determined his  
2 bonuses. He had complete control over Ron's career at Level 3.

3 And, as I said, Ron -- as Ron told you, and maybe Scotidas  
4 did -- Scotidas did too, Donelson was a bully and a difficult  
5 man. So Ron did exactly what Donelson told him to do every time  
6 Kekoa returned an invoice, every time Tommy Carlyle returned an  
7 invoice, Capallia sent it to Bill Wilson. No exceptions, no  
8 questions asked.

9 This reality of the situation makes it clear that Kekoa  
10 had no influence at all in Bill Wilson receiving the WITS orders  
11 from Level 3. That was a decision made at Level 3 by  
12 Tim Donelson. And, in fact, Kekoa could not have had any  
13 influence on that process.

14 Now, the government also argued that Kekoa never gave  
15 Verizon a fair opportunity to bid on the orders that went to  
16 Level 3. That is, Verizon was never given a chance to submit on  
17 the work.

18 Now, as you heard, Ms. Watkins said they didn't even think  
19 they could provide that work.

20 MR. BURKE: Objection. Misstates the testimony. There's  
21 no testimony on this.

22 THE COURT: All right.

23 MR. AMOLSCH: This might be meaningful if Kekoa had been  
24 trained on the duties of fair opportunity. If he understood he  
25 was supposed to give Verizon a fair opportunity. And the WITS

1 contract itself actually has exceptions written into the fair  
2 opportunity rule that apply in this case.

3 So if I could ask you Sandvig to bring up government's  
4 Exhibit 301, and go to Page 226, this is the WITS contract  
5 that's been admitted into evidence.

6 You go all the way down to Page 226. Okay. This says,  
7 "Exceptions to fair opportunity." This is written into the WITS  
8 contract which is in evidence. Exceptions provided for:  
9 "Unusual urgency that would lead to unacceptable delays,  
10 immediate short term needs arising on short notice, only one  
11 capable contractor, economy and efficiency, orders placed to  
12 augment and maintain engineering, orders associated with any  
13 moves, additions, changes or similar needs."

14 The fair opportunity WITS contract itself contains  
15 fair -- exceptions to the fair opportunity process built into  
16 the contract, and anyone one of the invoices Kekoa submitted,  
17 it's our position, could have arguably fit into any one of those  
18 positions.

19 Exceptions. And this again this brings me to that letter  
20 that Kekoa wrote to Ron Capallia, the fair opportunity letter  
21 that you heard so much about and the government told you about  
22 in its opening and closing. Ron Capallia -- Kekoa told you that  
23 Ron Capallia sounded panicked and scared when he called Kekoa  
24 asking him for this letter because it had been demanded by  
25 Tim Donelson. As it turns out, they didn't even need that

1 letter. If they had just looked at the contract, they would  
2 have seen that they could have made an argument that this was  
3 outside of the fair opportunity rules in any event.

4 And, again, as you think about whether the government has  
5 proven to you that Kekoa actively intended to defraud the  
6 government, remember the testimony of everyone from the Office  
7 of the Inspector General who testified for the government and  
8 still work for the government, Willie Spivey, Matthew Steiniger,  
9 and Tony Jenks.

10 So let's first talk about Willie Spivey. Willie Spivey  
11 as you will remember was the head of the contract shop at the  
12 Office of the Inspector General, the one with the contract  
13 training. His testimony was without question the definitive  
14 testimony on Kekoa's true intentions and the definitive proof of  
15 Kekoa's loyalty to the government.

16 As you will remember in March of 2012, a month after  
17 Kekoa's father, Fidel Ramos, was put on the MSO payroll,  
18 Mr. Wilson and MSO submitted a contract bid along with another  
19 company to the government in pursuit of a contract worth in  
20 excess of \$31 million. Mr. Wilson's bid was one of five other  
21 companies that submitted bids. As Mr. Spivey told you any of  
22 those five companies had the equal opportunity to win the  
23 contract.

24 Now, to sort through those five bids, Mr. Spivey put  
25 together a technical review board to determine which of the five



1 bids would deliver the best overall value for the government.  
2 Kekoa was on that review board. Kekoa reviewed the bids, and  
3 Kekoa cast his vote for a company called Phacil, a company in  
4 direct competition with Bill Wilson. In a vote that contributed  
5 to Bill Wilson and his company losing out on a \$31 million  
6 government contract.

7 That fact alone, standing alone, should be, I would  
8 think, the beginning and end of any discussion about whether  
9 Kekoa was working for Bill Wilson or whether -- and whether  
10 Kekoa was accepting bribes from Bill Wilson for favorable  
11 treatment, about whether Kekoa's loyalty was to Bill Wilson or  
12 to a government.

13 There is simply no other way to look at what happened.  
14 Kekoa directly voted against Bill Wilson and the \$31,000,000  
15 contract bid and when it happened a month after his father --  
16 father-in-law, Fidel, went on the MSO payroll and reach any  
17 conclusion, other than Kekoa was a servant of the people, not of  
18 Bill Wilson. This fact alone, should raise doubt in your mind  
19 requiring you to find Kekoa not guilty.

20 Now, you heard the government's opening and they talked  
21 about Kekoa for almost an hour and a half. And never once  
22 talked to you about this. They talked to you about that camera,  
23 and how many times did you hear about that camera, and what was  
24 it was used for. But they didn't talk to you about this because  
25 they are hoping that you don't really appreciate the

1 significance of what that means because this really does  
2 undercut their entire theory. Kekoa, when given the  
3 opportunity, chose the best interest of the government over any  
4 interest he might have had in Bill Wilson.

5 Now, Willie Spivey was able to tell you all of this  
6 because back in 2012 he wrote a memo about what happened in that  
7 technical review meeting. And when I showed him that report  
8 from almost ten years ago, Willie Spivey told it to you  
9 straight. He could have said he didn't remember the report or  
10 not sure or he didn't write it or someone made it up, but he  
11 didn't. He told you the report was accurate. He told you about  
12 the technical review board meeting in March of 2012, and he told  
13 you how Kekoa behaved. Willie Spivey testified with honor and  
14 integrity and for that, he deserves respect.

15 But the government is now trying to downplay that by  
16 pointing out that Bill Wilson partnered with another company on  
17 this bid and that Mr. Spivey's report did not precisely reveal  
18 how much Bill Wilson lost out on. But I don't see how that  
19 matters. If it was 50 percent, it was 16 million, if it was  
20 10 percent, it was 3.2 million, if it was 5 percent, it was  
21 1.8 million. But does the percentage make any difference? All  
22 of those figures dwarf the amount of money the government says  
23 Bill Wilson gave to Kekoa for favorable treatment.

24 Now, money is money. And how is it possible, again -- I  
25 still don't know, how is it possible that at this point the

1 government still doesn't know how much Bill Wilson lost as a  
2 result of Kekoa's choice of Phacil?

3 Then the government switched gears and seems to be saying  
4 that Kekoa should not even have been on that technical review  
5 board to begin with. That he snuck on to the review board only  
6 because he hid the fact that he had a conflict of interest.  
7 Now, I'm not really sure what to make of that. I'm not sure if  
8 the government was arguing that Kekoa purposely didn't disclose  
9 the conflict of interest so he could then vote against  
10 Bill Wilson from the inside, like, I don't know what that's  
11 supposed to mean. I don't know what to make of that. So just  
12 focus on what happened and given an opportunity to put  
13 Bill Wilson's interest ahead of the government's, Kekoa LumHo  
14 chose the government.

15 The reality of that, I think, is clear. No matter how  
16 you look at it, this evidence undermines and undercuts the  
17 government's really entire theory on the bribery. And I ask you  
18 just to imagine how bad this is for the government, but just  
19 imagine if Kekoa had voted for Bill Wilson instead of against  
20 him. Just imagine if that's how it came out, the government  
21 called Willie Spivey and asked him about the vote and they say  
22 yep, there's Kekoa voting for Bill Wilson a month after --

23 MR. BURKE: Objection. Counsel's inviting the jury to  
24 speculate about what testimony might be in a hypothetical trial.

25 MR. SALVATO: This is closing argument. He's got to be-

1 THE COURT: -- you can't use hypotheticals, though. You  
2 can use the evidence in the record. Go ahead.

3 MR. AMOLSCH: What we do know, and this is not  
4 hypothetical, is that Kekoa didn't vote for Bill Wilson he voted  
5 against him. And this is proof positive that Kekoa was not  
6 accepting bribes from Bill for any kind of favorable treatment.

7 Mr. Spivey also told you that his contract department  
8 should have been managing with the WITS contract from the  
9 beginning, but Matthew Steiniger and Stephen Wilson fought him  
10 at every turn. Now, my memory of the government's opening was  
11 that they told you they had proof Kekoa was the one who stood in  
12 Spivey's way, but that's not what happened either.

13 Willie Spivey told you it was Steiniger and Wilson who insisted  
14 they keep control of the WITS contract, not Kekoa. And that  
15 makes sense because Steiniger and Wilson needed control of WITS  
16 in order to get the things that they need when they needed them.

17 Lastly, Willie Spivey told you about the purchase of some  
18 laptop computers, the ones called Lenovos. The ones that  
19 Level 3 billed the government for and kept the money even after  
20 the order was cancelled. That was at least until Kekoa made  
21 Capallia refund the money to the government. Mr. Spivey told  
22 you that Kekoa had ordered these laptops with WITS that he did  
23 so in secret without Mr. Spivey's knowledge only to cancel the  
24 order when Mr. Spivey questioned him about it. And none of that  
25 is actually true. Mr. Spivey's own e-mails shows he was aware

1 of the purchase that he green lighted the purchase that Kekoa  
2 cancelled the laptops, not because Mr. Spivey questioned him,  
3 but because Lenovo couldn't deliver what they needed.

4 And I don't think Mr. Spivey got it right, but I don't  
5 think he was lying to you either. All this happened ten years  
6 ago, and I think it's just hard to keep track of stuff that  
7 happens in your head ten years ago.

8 So I will think that in that case that Willie Spivey was  
9 mistaken, but not that he was lying to you. But I do not think  
10 the same thing about Matthew Steiniger and Tony Jenks.

11 Matthew Steiniger, as you will remember, was Kekoa's  
12 direct supervisor. Matthew Steiniger actually had WITS  
13 training, Matthew Steiniger had other substantial government  
14 training, training in government contracts. He is the one who  
15 asked Kekoa to work with the WITS contract, and the one who, in  
16 his own words, encouraged Kekoa to use it.

17 In my -- the way I look at the evidence, Mr. Steiniger is  
18 the government's key witness against Kekoa, the one brought in  
19 to tell you that Kekoa was acting on his own without supervision  
20 placing orders with WITS that Steiniger never would have  
21 approved if he had just known what was going on.

22 But you know Steiniger approved them. Of course he  
23 approved them. You saw for yourself that Steiniger approved the  
24 orders for the move to the Mark Center. You saw Steiniger tell  
25 Kekoa that using WITS for the restack was obviously the right

1 way to go. You saw Steiniger tell Kekoa that his boss,  
2 Stephen Wilson, was 100 percent on board of using WITS to buy  
3 equipment.

4 And you saw how many times Steiniger just didn't want to  
5 answer my questions. When asked a question he didn't like it  
6 was: I don't know; I can't remember; I'm not sure; possibly;  
7 well, I may have said, yes, I really meant, no; sure, we needed  
8 the equipment, but I'm pretty sure we got all of it, but that's  
9 not my department; I don't know if we even got it. On and on  
10 and on and on. None of that makes any sense, and none of it  
11 rings true. Would any supervisor ask an untrained person to  
12 work with a contract the size of WITS and then pay absolutely no  
13 attention to what that person was doing? Is there any chance  
14 Matthew Steiniger asked Kekoa to work on a contract the size of  
15 WITS and then paid absolutely no attention to what Kekoa was  
16 doing?

17 You heard from multiple people in the government. There  
18 are meetings about meetings, layer upon layer of review.  
19 Steiniger knew exactly what was going on. He would have had to.  
20 And it's just not believable to think otherwise.

21 And while you're thinking about whether you can trust  
22 Matthew Steiniger when he told you that he'd -- he never would  
23 have approved these invoices and he never saw them until the  
24 end. Remember that he looked you all right in the eye and told  
25 you, "I always wanted Mr. Spivey to take over WITS. I always

1 wanted him there. I always felt uncomfortable with it."  
2 Mr. Spivey, of course, told you the exact opposite. He told you  
3 Steiniger -- he went to Steiniger and his boss Stephen Wilson  
4 multiple times about transferring WITS's to his contract job,  
5 and each time he was met with stiff resistance. Each time he  
6 asked, Steiniger and Stephen Wilson said, no. Those two, until  
7 the very end, held on to the WITS contract as long as they  
8 could, and only gave it up at the very end.

9 The only conclusion about that is that Mr. Steiniger is  
10 simply not telling the truth.

11 Now how you view his testimony is particularly crucial  
12 because again he's really the witness against Kekoa. His  
13 credibility is everything in this. Was Kekoa a lone wolf or  
14 were all his orders approved? And if you can't completely  
15 believe what Steiniger told you about Kekoa's secretly working  
16 behind the scenes, if you have any lingering doubts about  
17 whether Mr. Steiniger was telling you the whole truth about  
18 whether he reviewed Kekoa's orders before he placed them, then  
19 Kekoa is not guilty. It doesn't get anymore simple than that.

20 But the reality that Mr. Steiniger is still with the  
21 government he doesn't have many options. He's boxed in. He  
22 approved those orders, and now he has to say he didn't, and he  
23 doesn't have anybody to really give up for himself except Kekoa.  
24 So he's trying to give him up to you in exchange for himself.  
25 You just can't let that happen.

1 Tony Jenks. Now his part in all of this was limited to  
2 testifying about using WITS for something called the "restack."  
3 The restack was when the government rearranged and reorganized  
4 the interior layout of the Office of the Inspector General. And  
5 Tony Jenks was in charge of that process. He told you that. As  
6 you'll remember, Mr. Steiniger is the one who e-mailed both  
7 Kekoa and Tony Jenks at the very beginning telling them both  
8 that obviously OIG would be using WITS for the restack.  
9 Obviously.

10 And, yet, Tony Jenks sat right there in that chair, took  
11 the oath and told you that WITS was never part of the restack.  
12 He never met Donny Ravas, never planned the restack, never  
13 e-mailed Donny Ravas about the restack, never met Donny Ravas  
14 until the day of the restack, that Donny did a terrible job  
15 showing up with not enough guys and only one cart.

16 He's another one with no idea about anything going on  
17 with WITS and another OIG employee who apparently is completely  
18 in the dark about how things got done.

19 And then I showed him some of his own e-mails  
20 demonstrating that WITS actually was part of the restack from  
21 the very beginning, that he did, in fact, know Donny Ravas.  
22 That he met face the face with Donny Ravas many times before the  
23 restack, and he e-mailed and communicated with Donny Ravas about  
24 the restack, demonstrating, in short, that he was a complete  
25 liar.



1 But Jenks didn't really do the same things Steiniger did,  
2 he didn't go with: I don't know or maybe or who knows or  
3 possibly. He took the more direct approach of just all out  
4 lying directly to your face. Telling you those e-mails were  
5 false, that they'd been manufactured out of thin air that he was  
6 being set up.

7 Special Agent Russo talked about those e-mails this  
8 morning, and she said they all came from the Office of the  
9 Inspector General, and she has no reason to believe any of those  
10 are false. So then Tony Jenks basically lied about lying. It  
11 was a remarkable performance, and it would almost be funny if  
12 the stakes weren't so high. But make no mistake, Tony Jenks is  
13 a liar who came to this courtroom as a witness for the  
14 government, sworn an oath to tell the truth, and when he was  
15 confronted with his own words he lied again. How did that  
16 happen?

17 The reality is, it would have been much easier for him to  
18 admit what was just obviously true; they were openly using WITS.  
19 Everyone knew they were using WITS, but the only difference  
20 between Mr. Jenks and Mr. Steiniger, is that Mr. Jenks was just  
21 more brazen in his approach.

22 And then we have Donny Ravas. Donny Ravas is a good guy,  
23 a hardworking guy, blue collar guy. Donny came into this  
24 courtroom thinking he was doing the right thing. Only, it  
25 didn't work out for Donny because he didn't really say what the

1 government wanted him to say.

2 MR. BURKE: Object.

3 MR. AMOLSCH: Self-employed Donny came in here and told  
4 you the truth. He worked hard, he worked long hours, it was  
5 chaos, that he met Tony Jenks many times; that the government  
6 was up against a deadline to be out of the building; that he  
7 worked as hard as he could to make sure that the government met  
8 that deadline; that he did all he could to make sure the  
9 government wasn't on the hook for \$1 million a day; and that he  
10 really worked himself hard to make sure that got done.

11 And he told you the same thing about the restack; three  
12 days, hard work, where he and his guys sweated and humped that  
13 material where it needed to be, while Tony Jenks sat around,  
14 according to Donny Ravas, observing the work that Donny was  
15 actually doing.

16 And then the government wanted to ask him about his  
17 security clearances. Did he have one, when did he get it, how  
18 did he get it. Donny told you truthfully, he thought he had  
19 one, which seems fair. I mean we heard all the testimony about  
20 how secure the Mark Center is. I mean how did he even get in  
21 there without a security clearance? How did that even happen?

22 But setting the question of the security clearances  
23 aside, Donny Ravas has nothing to gain in this case. He's not  
24 working for the government. He's on his own, he's a private  
25 citizen. He came in here and told you the truth, and he has

1 nothing to gain by lying. And he told you definitively that  
2 Tony Jenks is a liar and that what he -- and the only conclusion  
3 you can draw about that, is that when he lied about Donny Ravas,  
4 he lied about Mr. LumHo, too.

5 Now, Kekoa LumHo is here in court, and I sat here for two  
6 weeks, and I began to think is name was actually  
7 defendant LumHo. We heard everybody else called by their first  
8 name; Ms. Sandvig, Mr. Amolsch, Judge O'Grady, Mr. Salvato,  
9 always their first name. That is Matthew Kekoa LumHo. And the  
10 government talked about him for almost an hour and a half today  
11 in its closing. He took the stand, told you about himself, who  
12 he is in the world, the church he attends, the charity he  
13 contributes, the volunteering he provides.

14 Kekoa has a wife and kids who are sitting right there in  
15 the courtroom who's friend love and -- and friends who love him  
16 enough to come to this courtroom and tell you how they view him.  
17 Tom Fields, Colonel Tom Fields, who went to West Point,  
18 graduated from West Point, colonel in the Army, came to this  
19 courthouse to testify for Kekoa in a government contracts fraud  
20 case. Colonel Tom Fields told you that there's no greater trust  
21 than the trust acquired to put your children in the hand of  
22 somebody else and that he trusted Kekoa completely with his  
23 children.

24 Reverend Zacharoli and Tom Fields have known Kekoa for a  
25 long time. They have spent years with him, they have seen him,

1 his character up close, in person, at his house, in church, with  
2 their children. This is how you get to know someone, who they  
3 really are.

4 And if you were to put Tom Fields and Reverend Zacharoli  
5 on a trust meter comparing those two with Matthew Steiniger and  
6 Anthony Jenks, there is no comparison between those people and  
7 how they view the world.

8 This is important because the judge, as His Honor  
9 instructed you, "Evidence of a defendant's reputation, if it's  
10 inconsistent with those traits of character ordinarily involved  
11 in the commissions of crimes, may give rise to a reasonable  
12 doubt, since you may think it improbable or unlikely that a  
13 person of good character for truth and veracity and honesty and  
14 integrity would commit such crimes."

15 And that's what they testified to, that Kekoa is a man of  
16 honesty, integrity, and veracity, and that that is how his  
17 family and the community view him.

18 Kekoa also told you he did his best to keep everyone in  
19 the loop. Again, there were meetings about meetings and how  
20 everyone who mattered knew what he was doing, when he was doing  
21 it as he was doing it, how they supported it, and authorized  
22 that. And, again, compare the testimony of Kekoa with the  
23 testimony of Matthew Steiniger versus the testimony of  
24 Tom Fields and the reverend.

25 Matthew Kekoa LumHo is an actual person. He is not just

1 defendant LumHo, he is not a nonperson, but he -- I don't want  
2 to you think of him that way. You can't just peg him as  
3 Defendant Lumho. Now, is he a defendant in this case, sure.  
4 But he is more accurately, in my opinion, an accused. The  
5 government has accused him of something, that's all. And as  
6 His Honor Judge O'Grady told you, an accusation is nothing more,  
7 it's just an accusation. He is Matthew Kekoa LumHo.

8 But it's the twists of the things that I think are the  
9 kind of issues that are going to get you distracted. Like when  
10 Agent Russo was telling you about Fidel Ramos, Kekoa's  
11 father-in-law, listing Rondelay Lane on his banking application,  
12 because Rondelay Lane is where Kekoa lives. Then you heard on  
13 cross-examination, where actually Fidel lived on Rondelay Lane,  
14 too, that he's lived there for ten years that he was living  
15 there when he filled out the application, and, in fact, he's  
16 only ever lived at Rondelay Lane. So is Rondelay Lane Kekoa's  
17 address, sure, but it's also Fidel's address.

18 And they know this. Or when the government was asking  
19 Keith Williams questions, Keith Williams was the gentleman  
20 ethics lawyer who told you about Kekoa's financial disclosure  
21 forms. Mr. Williams told you that gifts and non-investment  
22 income need to be reported on financial disclosure forms and it  
23 was a violation not to do so.

24 But there is more to those instructions. The  
25 instructions that told Kekoa to specifically include -- exclude

1 gifts from his family like the gifts and contributions Fidel  
2 made to his family expenses. That's what I'm talking about, you  
3 have to pay attention to the whole thing.

4 Now, when I spoke to you at the very beginning of the  
5 trial, I made certain predictions to you about what I thought  
6 the evidence would show in this case. All of which would  
7 demonstrate that Kekoa had no intention to defraud the  
8 government. And the first promise I made, the prediction is the  
9 evidence would show that Kekoa had never at any time received  
10 any training on how to use WITS. Despite the fact that the  
11 training is mandatory, despite the fact that Level 3 is the  
12 entity responsible for doing it.

13 You've heard so many witnesses; all, most, some of which,  
14 talked about how much training they had in their professional  
15 jobs. Kekoa may have been the only person to not receive  
16 training in this area, and, again, I submit to you that wasn't  
17 an accident.

18 Second, that a WITS order never started with Kekoa.  
19 Someone always came to him with a request, and that everyone who  
20 mattered, Stephen Wilson, Matthew Steiniger knew what he was  
21 ordering and how he was doing it. Again, there can't be any  
22 doubt about this.

23 Third, I promised you proof that Kekoa was always acting  
24 in the government's best interest. I told you again how he  
25 voted to give a \$31 million contract to Bill Wilson's competitor

1 because it was in the best interest of the government to do so.  
2 In June of 2012, Kekoa saved the government approximately  
3 \$130,000 in travel costs associated with the Windows 7 roll out  
4 because it was in the best interest of the government to do so.  
5 \$130,000 is more than four times what Fidel received from MSO  
6 and Mr. Wilson.

7 And how in August of 2012, he hounded Level 3 into  
8 returning the \$438,000 they paid for computers and then didn't  
9 deliver. Money that almost certainly came from -- was recouped  
10 from Bill Wilson, and he did that because it was in the best  
11 interest of the government to do so. And none of this was  
12 secret. It is all there in the documents.

13 Fifth, I told you the evidence would show that the  
14 camera, the lens, and the Bose sound track, bribes theoretically  
15 paid to Kekoa for his personal use of benefit never left the  
16 Office of the Inspector General, were never seen in his  
17 possession outside of the Office of the Inspector General, or  
18 stored at OIG headquarters, used by the Office of the Inspector  
19 General, purchased at the request of Stephen Wilson and that the  
20 Office of the Inspector General has those items right now in  
21 their possession. And that's exactly what the evidence showed.  
22 Terry Peck told you about how he located the items at the Mark  
23 Center.

24 And I think what the government -- I'm not sure, but it's  
25 like the government is telling you that they want to you believe

1 that Kekoa knew he was under investigation and then returned the  
2 bribes to the Office of the Inspector General to be put in the  
3 property room so that they would have them in time of their  
4 investigation. It's like he was turning in proof of his own  
5 guilt. Who does that?

6 If the government's theory is true that these were really  
7 personal gifts for Mr. LumHo to use in his personal capacity,  
8 why didn't he just sell them? Why didn't he just drop them in  
9 the sea? Why didn't he burn them? Why didn't he do anything  
10 other than bring them back to the Office of the Inspector  
11 General so they could be used against him in any upcoming  
12 investigation? That doesn't make any sense.

13 And, finally, there's Fidel Ramos, Kekoa's father-in-law.  
14 I told you I hadn't seen him in two years and I expected to see  
15 a somewhat confused and possibly scared guy trying to remember  
16 what happened to him, and I think by and large that's what you  
17 saw.

18 But I learned something from his testimony that I didn't  
19 know. I didn't know his relationship with his lawyers was so  
20 bad until he told us about it. How they went to the U.S.  
21 Attorney's Office with him and they yelled at him repeatedly,  
22 and this happened right before Fidel was taken downstairs to the  
23 basement to testify by himself in front of the Grand Jury to  
24 questions asked by the government, only the government.

25 Now, sure, Fidel's lawyers were on the outside of the



1 room. The same lawyers who had just been yelling at him in  
2 these rooms upstairs. So is it any wonder that even if Fidel  
3 could -- did know that he could go out and ask his lawyers  
4 questions, that he didn't stop and ask for help? Is it any  
5 wonder he stayed in the Grand Jury by himself and tried to do  
6 his best?

7 Now, you could tell, I think, by looking at Fidel testify  
8 that the Grand Jury was a miserable experience for him that he  
9 didn't want to answer the government's questions, they just  
10 wanted him to answer the government's questions and get out of  
11 there as soon as he could. So that's what he did. The only  
12 problem for Fidel is that he got locked into a story that just  
13 isn't true.

14 In the Grand Jury, Fidel said he never saw any of the  
15 checks that were deposited into his account. But you saw for  
16 yourself how many of them he signed. So he clearly saw them.  
17 You also heard about Fidel's DWI. And saw that he paid his  
18 court costs out of his own money from his own Navy Federal  
19 Credit Union account. So you knew -- so he knew he had money.

20 Fidel was aware of the checks and he was aware that they  
21 were going into his account, but that's not what he told the  
22 Grand Jury. And Fidel, to this day, is still trying to figure  
23 out how to solve that problem. How does he reconcile the fact  
24 that what he said in the Grand Jury just isn't true given the  
25 physical evidence that you've seen here today -- or in this

1 trial.

2 I told you that you would see that Fidel was hired when  
3 Kekoa was in Korea on business, and that Fidel when he came back  
4 Fidel had job, Fidel took the job fully expecting to perform  
5 work.

6 Now, maybe Fidel thought he was being paid just for being  
7 on call, I don't know, who knows what Fidel was thinking. Now,  
8 Fidel did testify that he mentioned early on that MSO hadn't yet  
9 called him, but at this point I'm not sure even Fidel knows if  
10 he actually said that or if he did when he said it. In this  
11 regard he's like Willie Spivey he's trying to put together  
12 events that happened ten years ago.

13 But even if you decide to believe that Kekoa -- he told  
14 Kekoa once early on that he was waiting for MSO to call, it is  
15 overwhelmingly clear that Fidel kept the reality of the  
16 situation to himself and there's just no credible evidence that  
17 he ever brought up the topic again.

18 Now, the government did show Mr. LumHo when he testified,  
19 a check. And there is the smallest piece of evidence that Kekoa  
20 knew or should have known that Fidel was working at MSO, but you  
21 read and saw all those checks the huge FrankCrum written in big  
22 letters. You saw the W2 form Kekoa submitted for Fidel listing  
23 Frank, Fidel's employer, as FrankCrum.

24 So was there MSO Tech like in small print as part of the  
25 address? Yes, there was. But how can any of you be even

1 remotely sure that Kekoa ever even knew that, saw it, or had any  
2 impact on what he was doing?

3 And you will remember that Kekoa is the one who got Fidel  
4 to file his taxes. When Fidel came to visit Kekoa, he hadn't  
5 filed his taxes for five, four, three, five years, and Kekoa  
6 went back and made sure Fidel paid his taxes that he did what he  
7 was supposed to do including the taxes he was supposed to pay on  
8 the money he earned while he was working.

9 So the government on the one hand wants to tell you that  
10 Kekoa went out of his way to conceal the fact that he was  
11 receiving bribes by not disclosing it on his financial  
12 disclosure form, while at the same time Kekoa is taking that  
13 money and reporting it to the IRS. So Kekoa, maybe he should  
14 have paid attention and maybe he should have noticed that  
15 detail.

16 And the government also talks to you about how the checks  
17 stopped coming in. According to the government, if you deposit  
18 the check you're guilty, but as soon as you stop depositing the  
19 checks you're guilty. Kekoa isn't guilty of any of it. If it  
20 wasn't a bribe from Bill Wilson to provide him with favorable  
21 treatment, and again, the evidence all shows Kekoa never  
22 provided Bill Wilson favorable treatment.

23 Which bring me to what else is missing and I mean, is  
24 there any evidence Bill Wilson knew Fidel was being paid by MSO?  
25 At all ever? Unlike Natalie Capallia, there's not a single

1 e-mail that we've seen mentioning Fidel from anyone, not from  
2 Tim Donelson, not from Ron Capallia, not from Bill Wilson. They  
3 scoured Kekoa's e-mail account both his -- nothing on his OIG  
4 account, nothing on his personal account. There's simply  
5 nothing out there showing that Bill Wilson had the slightest  
6 idea MSO was even paying Fidel Ramos, had even heard his name,  
7 much less knew who Fidel Ramos was, or that Fidel Ramos was even  
8 related to Kekoa LumHo.

9 There's a file in evidence on Natalie Capallia the  
10 employment file that came from MSO, and I don't think there's an  
11 employment file in there about Fidel.

12 The evidence is clear that whatever was going on with  
13 Fidel and MSO, Bill Wilson was not using Fidel to bribe Kekoa.

14 And the government keeps trying to lump Fidel together  
15 with Natalie Capallia, and the reality is that they are utterly  
16 different in almost every respect. The length of time Fidel was  
17 paid by MSO versus Natalie Capallia, months versus years. The  
18 amount he was paid by MSO, \$30,000 in change versus over  
19 \$1 million. The amount that was shared, 14,000 of that money --  
20 14,600 went to Kekoa and his family for expenses and credit  
21 cards. Natalie and Ron shared all of it, cars the money, all of  
22 it. And the government wants you to think of them as being the  
23 same, but they are not the same.

24 You saw Natalie Capallia. She's motivated by money. She  
25 received close to a million dollars, received an immunity order

1 and has no obligation to pay that money back, not her. And she  
2 has not paid back a single dime. And she somehow still managed  
3 to qualify for a court appointed lawyer. How did that happen?

4 Fidel wanted a job because he had self-respect. Fidel  
5 got \$25,000, paid for a lawyer no immunity order and a subpoena  
6 to testify against his son-in-law. Fidel is illiterate and  
7 uneducated, that is the difference between Natalie Capallia and  
8 Fidel Ramos.

9 I also ask you to pay particular attention to certain  
10 dates, with regard to the Bridge contract, I didn't know they  
11 were going to talk about. But I ask you to take special note of  
12 October 5th, the day the contract protest happened, and October  
13 12th, the day that Kekoa e-mailed Ron Capallia, and October  
14 26th, the end of the 24-hour period in which GSA took to award  
15 its multimillion dollar contract to Level 3.

16 And, again, the evidence on what happened is  
17 overwhelmingly clear by October 7th, two days after the protest.  
18 The powers that be had decided that Level 3 would fill the gap  
19 and would use WITS to pay for it. Willie Spivey found the  
20 contract award to be fair and reasonable and in the best  
21 interest of the government. You saw his signed statement. And  
22 the 24-hour fair opportunity period GSA gave Verizon to submit a  
23 bid for a contract worth over \$2 million, that's not real. That  
24 was a formality given to cover a decision that had been made  
25 weeks earlier. You heard Mr. Spivey. You heard them all say,

1 "GSA does not award contracts in 24 hours, and they do not award  
2 multimillion dollar contracts in 24 hours." The 24-hour fair  
3 opportunity period given by GSA was cover for a decision that  
4 had been made long before that bid ever went out.

5 On October 7th, two days after the protest, you saw the  
6 e-mails it had been decided Level 3 was getting the contract and  
7 WITS was being used to pay for it. Kekoa had left them nothing  
8 to do with the actual award of the Bridge contract. He didn't  
9 have anything to do with the costs. You heard what was told.  
10 The costs were entirely determined upon the positions that  
11 Matthew Steiniger wanted filled. He did nothing to give Level 3  
12 a competitive advantage. The decisions had been made earlier  
13 and the costs and the e-mail are not even the same costs  
14 associated with the contract. But there is that single e-mail  
15 on October 12th, with pricing information that could not have  
16 mattered less.

17 You need to understand and focus that that's what they're  
18 trying to do with this case. They're trying to take things like  
19 that and make them into bigger items than they really are.

20 The second series of dates involves the 13 invoices the  
21 government insists are fraudulent. Special Agent Russo talked  
22 about how they searched the e-mail databases to see if these --  
23 you know, their e-mails e-mailing around from Kekoa, e-mailing  
24 around the service orders. Well, one, she said she didn't check  
25 Matthew Steiniger's e-mail account because she wasn't able to,

1 but also you saw, I think, without exception every one of those  
2 services orders had been printed out and signed by hand. It  
3 wasn't electronically signed. So Kekoa had printed them up,  
4 taken them around and shown them to people, signed them, and  
5 then e-mailed them back to Ron Capallia. So there wouldn't have  
6 been any e-mails from Kekoa, e-mailing the service orders to  
7 Matthew Steiniger because that's not how it was done. You heard  
8 how it was done. He printed up the invoice, he took it to the  
9 comptroller, he took it to Matthew Steiniger, he signed it, they  
10 approved it, and they sent it back. And were there exceptions  
11 to that rule or were there occasions when that didn't happen?  
12 Yes, but that is the overwhelming majority of the way these  
13 things happened.

14 And you saw on August 2nd, that Kekoa was part of a  
15 discussion when they were talking about how they were going to  
16 pay for moving the servers from 400 Army Navy Drive over to the  
17 Mark Center. And they would be paid for with cable abatement.  
18 Then you saw the e-mails in January where Mr. Steiniger is  
19 making sure Kekoa has submitted the paperwork to Level 3 for  
20 this must-have move, and Kekoa forwarding Mr. Steiniger the  
21 order he got from Ron Capallia, the one that listed as cabling.  
22 Steiniger reviewing it, sending it to Jennifer Paper in the  
23 comptroller's office explaining to her why the price had gone  
24 up, clearly indicating that he had reviewed it. Jennifer Paper  
25 getting the order and approving it. Tommy Carlyle signing it

1 and returning it. Yet, according to the government Kekoa did  
2 all this in the dark, in secret, hiding in plain sight.

3 It's preposterous. How many different people reviewed  
4 that service order alone? Cabling for moving, and they approved  
5 it.

6 Yet, according to Mr. Steiniger he had no idea what was  
7 going on. It is simply not possible to believe that that is  
8 true, and it is simply not possible to believe that  
9 Matthew Steiniger is telling you the truth when he says that.

10 As for the rest, the government showed you an e-mail  
11 where Mr. Steiniger is complaining about the Samsung TVs bought  
12 with WITS. You saw an e-mail from Matthew Steiniger to  
13 Mr. Kekoa LumHo asking about the smart boards being bought from  
14 MSO with WITS. You saw the e-mail -- to -- to Mr. Steiniger and  
15 Kekoa about how much MSO would be charging to send IT  
16 contractors to the field office. Contractors that were paid for  
17 with WITS.

18 You saw how Mr. Steiniger told Kekoa that Stephen -- that  
19 Mr. Wilson was 100 percent on board with buying equipment with  
20 WITS so that OI- -- the Office of the Inspector General could  
21 back up its data at an off-site location.

22 You saw an e-mail from Mr. Steiniger telling Kekoa and  
23 Jenks that obviously WITS could be used for restacks, and on and  
24 on and on.

25 All these e-mails and Mr. Steiniger had no idea what was



1 going on? That's not possible.

2 October 12th, this is the day of the audit. When the  
3 financial gurus began the process of reviewing the work orders  
4 that were part of -- that were a part of this accusation against  
5 Kekoa. As you saw and heard, Kekoa gave the invoices to  
6 Mr. Steiniger at least twice. Once at 9:00, 9:30 and once at  
7 midnight. That in-between that time he and Mr. Steiniger  
8 discussed the invoices and discussed approving -- discussed  
9 sending them to the auditors.

10 He told you that he and Mr. Steiniger asked -- talked  
11 about it and that every question was answered. You heard there  
12 was a conference call with the financial gurus the next day to  
13 review these invoices. You heard that Mr. Steiniger and Kekoa  
14 talked afterwards and that afterwards Mr. LumHo felt like  
15 everything looked good.

16 You also saw that Kekoa stayed employed at the Office of  
17 the Inspector General for another two years before taking a  
18 promotion to the Department of Justice. So what does that tell  
19 you about whether there was any concern about these invoices?  
20 Not back in 2012, there wasn't.

21 November 2nd, that's the date roughly three weeks after  
22 the invoice reviewed that Matthew Steiniger submitted his annual  
23 review for Kekoa. Declaring him to be in his own words, an  
24 excellent employee. And is there any chance Matthew Steiniger  
25 never spoke to anyone about those invoices during the audit or

1 in the immediate days after or indeed at any time before writing  
2 that review? Do you think he was in the dark about how the  
3 auditors viewed those WITS 3 invoices? There's not a chance in  
4 the world, and he gave Kekoa a sparkling, sterling, excellent  
5 review.

6 The inescapable conclusion of all of this is that  
7 everybody who mattered knew what was going on when it was  
8 happening. You heard about the items that were purchased and  
9 the reasons they were purchased: We needed equipment now, we  
10 needed HP backup tapes, we needed a SMARTnet maintenance  
11 programs so that we could have phone and Internet service, we  
12 need to be able to provide Internet security so that our  
13 Internet wouldn't get cut off. Now, were there other orders  
14 that didn't fit into that category? Absolutely, but when  
15 Stephen Wilson asks you to buy something you do it.

16 So who knew? Stephen Wilson, Assistant Inspector General  
17 and Matthew Steiniger's boss; Willie Spivey, head of the  
18 contracts office; Tommy Carlyle, who worked with Kekoa and  
19 actually had WITS training, returned both the order for the  
20 restack which lists the CLIN or the work as being some sort of  
21 services unrelated to moving. And Tommy Carlyle is the one who  
22 sent back the order for the original move from 400 Army Navy  
23 Drive.

24 You saw an e-mail where Mr. LumHo sent -- at least one of  
25 those invoices to Ms. Paper in the office. You saw the e-mails

1 from Ms. Paper about the equipment being used with WITS and how  
2 she was tracking it. And it wasn't until ten years later in  
3 this trial that now suddenly nobody has any idea what was going  
4 on and nobody knows anything.

5 So with all that as background, let's finally take a look  
6 at the charges themselves. Always keeping in mind Kekoa's  
7 presumption of innocence, the government's burden of proof  
8 beyond a reasonable doubt, the fact that it appears everyone who  
9 mattered knew what was going on when he was doing it and as it  
10 was happening, and the fact that Kekoa voted against Mr. Wilson  
11 receiving a \$31 million contract when given the opportunity to  
12 show Bill Wilson favorable treatment.

13 His Honor told you that the mere existence of an  
14 undisclosed conflict of interest or undis- -- is, without more,  
15 can't serve as the basis for finding Mr. LumHo agreed to commit  
16 honest services fraud. So even if you think that he did have an  
17 undisclosed conflict of interests because he should have told  
18 somebody that his father-in-law was working for MSO, even if you  
19 come to that conclusion, that is not enough to support a claim  
20 for honest services fraud. That may be an ethics violation, but  
21 it is not a crime.

22 The Court also instructed you that the first nine counts  
23 in this indictment are various acts of fraud. And that in order  
24 to prove that the government has to prove by proof beyond a  
25 reasonable doubt that Kekoa acted with the conscious decision to

1 deceive, with the intent to be untruthful and deceptive, that  
2 his conduct was willful, deliberate, and not by mistake.

3 And the Court also read you an instruction, the Good  
4 Faith instruction. That says Kekoa, "Cannot be guilty of any of  
5 those counts if he submitted those orders in good faith." That  
6 is he cannot be guilty of the first nine counts if he submitted  
7 those invoices because of an honest mistake in judgment or an  
8 error in management.

9 This means he cannot be guilty simply because he  
10 submitted invoices that were internally inaccurate or internally  
11 inconsistent. Mistakes in judgment or mistakes in management  
12 are simply inconsistent with the unlawful intent to commit  
13 fraud.

14 Instead, the laws governing the crimes for which Kekoa is  
15 charged in Counts 1, 2, 5, 6, 7, 8, 9, are written to subject  
16 criminal punishment only to those who act knowingly and  
17 willfully, willfully being with- --

18 MR. BURKE: Objection, misstates the law.

19 THE COURT: Yeah.

20 MR. AMOLSCH: Willfully --

21 THE COURT: Ladies and gentlemen, there are specific  
22 instructions on each of the different counts, and they carry  
23 different elements, each one. The intent is different in some  
24 counts versus other counts, and Counsel is speaking generally  
25 about the different counts and kind of mixing and not matching

1     them.  So the -- your job is to look carefully at the  
2     instructions that I've given you and make sure that you  
3     understand the elements that are necessary in each of the various  
4     offenses, and let's try not to --

5             MR. AMOLSCH:  Yes, Your Honor.

6             THE COURT:  -- compile them together and not identify them  
7     specifically.  You have the instructions before you if you want  
8     to use them, please do.

9             MR. AMOLSCH:  Thank you, Your Honor.

10            And finally, the burden of proving good faith is not  
11     Kekoa's because Kekoa doesn't have an obligation to prove  
12     anything in this case.  He doesn't have to prove he acted in good  
13     faith.  The presumption is that Kekoa submitted these invoices in  
14     good faith.  It is the government's burden to overcome that  
15     presumption.  Proof beyond a reasonable doubt that Kekoa acted  
16     with criminal intent.

17            And that is why I said at the very beginning that Kekoa's  
18     intent in this case is everything, that the presumption of  
19     innocence standing alone is sufficient for an acquittal.  So the  
20     question is, has he proven -- has the government proven to you  
21     beyond a reasonable doubt what Kekoa's intent actually was,  
22     beyond a reasonable doubt, the highest legal hurdle we have.  
23     Have they proved to you that this wasn't a mistake in judgment,  
24     that this wasn't a mistake in management?  That this was  
25     criminal.

1           The government's theory is that these are criminal because  
2 he was being bribed. And on this, again, the evidence is  
3 overwhelming. It is entirely reasonable to conclude that Kekoa  
4 acted in good faith because his boss told him it was okay,  
5 because Mr. Wilson told him it was okay -- Stephen Wilson,  
6 because he was trying his best because it was chaos, and everyone  
7 was just trying to get through the next day, still having phones  
8 that work and a connection to the Internet, not because he was  
9 being bribed.

10           Mr. LumHo is also charged with acceptance of bribes by a  
11 public official meaning he accepted a bribe from Mr. Wilson,  
12 which, as I said, it's the heart of the government's case. The  
13 center of gravity, in my opinion, of the entire indictment.

14           Now, according to the government, these invoices don't get  
15 sent to Level 3, didn't get sent to Level 3 because Kekoa made a  
16 mistake in judgment. They happened because Kekoa was taking a  
17 bribe. And everything depends on that.

18           Now, there have been many instructions on bribery and you  
19 need to pay attention to all of them, but at bottom, there has to  
20 be some evidence of a thing of value flowing to a public official  
21 in exchange for favorable treatment. This is the *quid pro quo*.  
22 There has to be a "you give me this, and I give you that."

23           And where in all of this is there any evidence of Kekoa  
24 taking an official action favorable to Bill Wilson in exchange  
25 for a bribe? Where in all of this is there evidence of Kekoa

1 taking an official action in favor of Bill Wilson at all? All  
2 the evidence supports the opposite conclusion. Kekoa  
3 consistently put the government's best interest at the top of any  
4 decision tree he had. It is simply not possible to square  
5 Bill Wilson paying Fidel Ramos as a bribe to Kekoa, and at the  
6 same time Kekoa voting to award a \$31 million contract to  
7 Bill Wilson's competitor. I don't see how those two ideas can  
8 exist together.

9 THE COURT: You're at 75 minutes.

10 MR. AMOLSCH: Yes, sir. I'm about done.

11 THE COURT: All right.

12 MR. AMOLSCH: Yes, sir.

13 In your head at the same time, and we know he voted  
14 against Bill Wilson, which means Bill Wilson could not have been  
15 bribing Kekoa LumHo for favorable treatment.

16 This, by itself, this unexplained act of putting the  
17 government's interest first has to create a reasonable doubt in  
18 your mind about what Kekoa was doing.

19 The last charge is involving his financial disclosure  
20 form. The government must prove beyond a reasonable doubt that  
21 Kekoa made a false statement knowing it was false, rather than  
22 out of ignorance, mistake, or accident.

23 Now, in -- you know, normal speak that means the  
24 government has to show you Kekoa knowingly lied on the financial  
25 disclosure form when he didn't disclose the bribes the government

1 says were paid to him through Fidel. Once more, the government  
2 hasn't proved beyond a reasonable doubt that Kekoa was receiving  
3 bribes in exchange for favorable treatment. There wasn't a  
4 bribe, and this false statement accusation doesn't stand.

5 The law also requires the government to prove Kekoa didn't  
6 simply make a mistake when he filled out this form, or simply  
7 didn't understand that it was a deliberate decision to be  
8 untruthful.

9 Now, you heard Mr. LumHo's testimony about how he's  
10 familiar with this form, how he learned all about the form and  
11 its requirements when he was caring for his father in the last  
12 days of his cancer. And Keith Williams, the government witness,  
13 told you Kekoa does not have to disclose money given to him by  
14 relatives, like gifts given to him by relatives, like money Fidel  
15 passed on to his family in contributions to the living expenses,  
16 the money Fidel contributed to the family vacation that Fidel was  
17 on, those don't have to be reported, so Kekoa didn't report it.  
18 He didn't report it because he wasn't supposed to and he wasn't  
19 required to. Again, it all comes back to the bribe.

20 So what is the conclusion of all of this? You look at the  
21 e-mails back and forth between Kekoa and Matthew and the rest of  
22 his colleagues, you look at the awards Kekoa received, you look  
23 at the review Mr. Steiniger gave him after the audits of the  
24 invoices was complete. You saw how Kekoa acted in the best  
25 interest of the government, even at the expense of Bill Wilson.



1 You listened to the testimony and you observed the people who  
2 gave that testimony. Tom Fields, the reverend, Anthony Jenks,  
3 Matthew Steiniger, you review that testimony, and you decide who  
4 to credit and there's only one possible conclusion: Kekoa wasn't  
5 taking a bribe from anybody in exchange for anything. He was  
6 doing exactly what he thought he was supposed to do, everything  
7 that he thought his bosses told him it was okay to do, and he was  
8 doing it in good faith, not committing fraud on the government.  
9 Kekoa was not materially misleading anybody about what was being  
10 purchased or how it was being purchased. And remember, again,  
11 there is no way to explain that \$31 billion contract award in the  
12 context of a bribe from Mr. Wilson. There is no fraud here,  
13 there is no material misrepresentation, there's no bribery,  
14 there's no *quid quo pro*, there are no favorable actions, there's  
15 nothing but a good guy trying his best in incredibly difficult  
16 times.

17 And, lastly, I will leave with you this and then I'm  
18 finished. This is a complicated case. We've been here for three  
19 weeks, and there's a lot of information to absorb. So, if any of  
20 you are still confused about what actually happened, if after  
21 two-and-a-half weeks you still have questions about what WITS  
22 means or who the players are or what GSA does, the government  
23 hasn't made that clear to you, then you must find Kekoa not  
24 guilty.

25 Please don't throw up your hand and say guilty because you

1 don't understand, hoping some court down the road will straighten  
2 this all out. If any of you still don't understand what really  
3 happened, you cannot blame Kekoa for that. These are the  
4 government's allegations, they have an obligation to you to make  
5 it clear so that you understand what really happened. It is up  
6 to them to explain it to you, not Kekoa. And on this, and all of  
7 it as Your Honor told you, your verdict is your own. You're, of  
8 course, to consult with each other, to listen and work with each  
9 other to exchange ideas, but at the end of the day, your verdict  
10 is your verdict. It belongs to you.

11 It is your duty to make sure that you are satisfied by  
12 proof beyond a reasonable doubt that Kekoa is just not being  
13 sacrificed, so that Mr. Steiniger and Mr. Jenks can continue to  
14 go on with their lives. You cannot let it happen on this  
15 evidence, not on the words of these people. As I told you at the  
16 beginning, this is a serious matter for serious people. You are  
17 the guardians of the government's burden of proof. Twelve people  
18 drawn at random from the community charged with holding them to  
19 their burden. We have been with Mr. LumHo for four years now and  
20 I have been fighting this fight with him for that long.  
21 Mr. Salvato and I have been by him every step of the way, but we  
22 are now done. I am now turning him over to you. Mr. LumHo is  
23 not guilty. I ask that you find him not guilty on all charges,  
24 and that you return him to his family.

25 Thank you.

1 THE COURT: All right. Thank you, Mr. Amolsch. I'd like  
2 to move forward with the rebuttal of the government, unless you  
3 need a short break.

4 MR. BURKE: No.

5 THE COURT: All right. Let's do our rebuttal at this  
6 time.

7 I'm sorry, you need a short bathroom break, comfort break?

8 MR. AMOLSCH: No.

9 THE COURT: Then we're going to finish up tonight.

10 **FINAL CLOSING ARGUMENT ON BEHALF OF THE GOVERNMENT**

11 MR. BURKE: Nonsense. Nonsense. Nonsense about the facts  
12 and nonsense about the law. Ladies and gentlemen, you are the  
13 deciders of the facts. Your memory controls, not what Mr.  
14 Amolsch says the testimony was. Judge O'Grady gives you the law.  
15 That's the law you're required to follow, not what Mr. Amolsch  
16 says that it was.

17 Now, ladies and gentlemen, the core of Mr. Amolsch's  
18 argument here this evening is based on an obfuscation. Kekoa  
19 Lumho is not indicted and is not standing trial because he used  
20 WITS. He was indicted and he is standing trial because he lied  
21 while using WITS. He's not indicted because he misread footnote  
22 483 in a 300-page contract. He's indicted because he  
23 deliberately and purposefully lied on service orders.

24 Mr. Amolsch talks about how everyone knew, but, ladies and  
25 gentlemen, what did they know? They knew what Kekoa Lumho chose

1 to tell them, and the fraud, ladies and gentlemen, in this case  
2 required you to have two pieces of information.

3 Number one, you have to know exactly what the service  
4 orders say, and then, number 2, you have to know what we're  
5 really getting. So, yes, of course people at the DoD OIG knew  
6 that he was using WITS. They trusted him. He was the designated  
7 agency representative, but where in this, ladies and gentlemen,  
8 is there any information where he said, Hey, I'm lying on these  
9 services orders; hey, these hours, they're made up; hey, the  
10 work, none of that actually happened? There's no evidence of  
11 that, ladies and gentlemen. So when Mr. Amolsch tells you  
12 everyone knew, what he's doing is he's cashing in on the  
13 deliberate obfuscation that his client perpetrated during the  
14 crime.

15 He's asking you, in essence -- he blew it past them then,  
16 so you can't convict now. The crime is not some complex  
17 government contracting regulation. It's not something that you  
18 need any training, specialized or otherwise, to know. Don't lie  
19 on a bill. Don't take bribes. What specialized training do you  
20 need to know in order to know that? None, ladies and gentlemen.  
21 None.

22 And there's not a shred of evidence anywhere that Kekoa  
23 Lumho shared the critical information that would have disclosed  
24 his fraud with anyone until he was forced to do so as a part of  
25 the audit.

1           And then look, look, look what he did the moment after he  
2       learns of the audit. He immediately stops taking the bribes.  
3       And consider, ladies and gentlemen, the inconsistency of the  
4       arguments that Mr. Amolsch raises for you and the hypocrisy of  
5       Mr. Lumho's position. He didn't know anything at all about GSA,  
6       this contract. Everyone else is to blame: Matthew Steiniger,  
7       Willie Spivey, Ron Capallia, GSA, Level 3, Tim Donelson. They're  
8       all to blame, but he wants you to see him as the hero when he's  
9       the one who saved money on those GSA telephone contracts, when he  
10      so studiously was aware of the penalties for moving out of Army  
11      Navy Drive, when he was aware of the leases and the lease  
12      agreements at GSA properties, and how he devised a perfect  
13      solution, how he's this brilliant IT guy, but he can't read a  
14      one-page form for a bill that's 400, 500, \$600,000?

15           We're not talking about somebody who accidentally wrote  
16      the wrong thing on a voucher for a baggage fee. Of course he  
17      looked at these, ladies and gentlemen. Of course he knew the  
18      fraud. The crime is not using WITS, the crime is lying on bills,  
19      and the lies matter, ladies and gentlemen. They matter because  
20      they were essential to the corrupt conspiracy. By lying about  
21      what it was, he made sure that he could keep these orders under  
22      WITS, because if he told the truth, they wouldn't have been able  
23      to use that contract, and he wouldn't have been able to control  
24      it.

25           If he told the truth, they would have used any one of the

1 other number of options that Willie Spivey told you about. Of  
2 course the government has lots of options for buying stuff. The  
3 Army contracting command, GSA's IT 70 Schedule, the various  
4 catalogs that Mr. Spivey told you about, the government purchase  
5 card, the Defense Information Systems Act. He controls none of  
6 those options.

7 Every single one of them could have been used to buy all  
8 of this stuff, but it would have required him, number one, to  
9 tell the truth, and then, number 2, he would have lost control,  
10 and that would have meant no money in Bill Wilson's pocket. This  
11 did not happen by mistake.

12 And when you're considering, ladies and gentlemen, this  
13 argument that everyone knew, did everyone know he was on the  
14 take? Did everyone know he was secretly receiving money from  
15 Bill Wilson? Do you think they might have scrutinized his  
16 actions just a little bit differently?

17 Ladies and gentlemen, defense counsel pointed out how the  
18 character witnesses came in and told you how they trusted Kekoa  
19 Lumho. You know who else trusted Kekoa Lumho? Matthew  
20 Steiniger, Steven Wilson, Willie Spivey. The United States  
21 government placed its trust in Kekoa Lumho, and he abused that  
22 trust.

23 You know who else placed his trust in Kekoa Lumho? Fidel  
24 Ramos placed his trust in Kekoa Lumho. Defense counsel wants to  
25 say that Fidel Ramos, he's lying because he obviously saw these

1 checks from MSO Tech, but he also wants you to say, well, but  
2 Kekoa Lumho couldn't possibly have known what those checks were  
3 about. Well, one of these two men is illiterate, and one of  
4 these two men is a highly sophisticated IT professional. So  
5 which one of these men really knew what was going on? Defendant  
6 Lumho, of course.

7 So, of course Fidel Ramos doesn't recognize that there are  
8 checks coming in from MSO, because those checks aren't intended  
9 for him, and he can't read. And so it does appear that he signed  
10 some of them, ladies and gentlemen, but how does he know what  
11 these checks are unless Kekoa Lumho tells him? That is how Kekoa  
12 Lumho used the trust that people placed in him. He used it to  
13 commit the crimes charged in the indictment.

14 Now, ladies and gentlemen, Mr. Wilson's lawyer, for his  
15 argument, pointed out that there were several things that were  
16 said, maybe they were just the product of mistake in memory, but  
17 I would encourage you, ladies and gentlemen, to go back, read the  
18 transcript of Mr. Wilson's testimony. When he goes on and on  
19 about Natalie Capallia's job, is that a mistake? When he talks  
20 at length about how he couldn't possibly afford a bulldozer and  
21 that's why he had to pay Tim Donelson, is that a mistake? Of  
22 course not, ladies and gentlemen. Those are deliberate,  
23 purposeful false statements that he knew.

24 Mr. Amolsch also says that, ah-ha, ah-ha, AIS. Well,  
25 ladies and gentlemen, he's misstated the facts, and he's

1 misstated the law. First of all, ladies and gentlemen, this  
2 technical evaluation board was in March of 2012, prior to most of  
3 the bribes being paid to Kekoa Lumho. There's no information  
4 anywhere in this form that Bill Wilson's company has a stake in  
5 this vote. There's no information anywhere in this form telling  
6 Kekoa Lumho how much, if anything, Bill Wilson would receive  
7 based on his vote. But if, if, in fact, he did know, then that  
8 proves conclusively that he's also lying.

9 Ms. Sandvig, can you pull up Government's Exhibit 234 at  
10 page 3. Blow that up.

11 He's required to disclose whether he or anyone in his  
12 family have an employment interest in any of the companies  
13 competing. So either he doesn't know that MSO's involved, in  
14 which case his actions don't tell you anything about his intent,  
15 or he does know that MSO's involved and he's concealing it from  
16 everyone, which tells you everything about his intent.

17 And, ladies and gentlemen, look what happens after this  
18 technical evaluation board. Ms. Sandvig, Government's  
19 Exhibit 961, page 45. Blow up the check, please. From Bill  
20 Wilson's perspective, if at first you don't succeed, try, try  
21 again. After the technical evaluation board, Bill Wilson  
22 continues to bribe Kekoa Lumho and to increase the amount he's  
23 paying to Kekoa Lumho.

24 And, ladies and gentlemen, you'll also be instructed or  
25 you have been instructed that in order to satisfy the elements of



1 bribery, the public official need not actually perform an  
2 official act or even intend to do so. So, whether or not Kekoa  
3 Lumho took the action in the AIS instance or not doesn't  
4 determine his guilt; rather, ladies and gentlemen, you may, for  
5 example, conclude that an agreement was reached if the evidence  
6 shows that the public official received a thing of value knowing  
7 that it was given with the expectation that the official would  
8 perform an official act in return. Kekoa Lumho knows exactly why  
9 Bill Wilson is sending this money, and he knows why, after that  
10 vote, he increased the money. And then, ladies and gentlemen,  
11 let's see what happens after Bill Wilson increases the bribes to  
12 Kekoa Lumho. He continues to award or to place service orders  
13 that he knows are fraudulent benefitting Bill Wilson's company.

14 And, ladies and gentlemen, then you heard about his  
15 efforts to try to stave off this disconnection when the DoD IG  
16 was talking about removing the business from MSO Tech, and you  
17 heard about that, ladies and gentlemen, through a voicemail left  
18 by Barry Atwood.

19 Ms. Sandvig, could you please play Government's  
20 Exhibit 194.

21 (Audiotape played.)

22 MR. BURKE: The voicemail was left on July 25th, 2012.  
23 "Kekoa's going to fix it." He's trying to stave off the  
24 disconnect and do everything in his power to keep money flowing  
25 into the pockets of Bill Wilson.

1 Ladies and gentlemen, the evidence put before you in this  
2 case is overwhelming. Now, there was one point that Mr. Amolsch  
3 said in his closing with which I completely agree. You are the  
4 ones who must hold the government to its burden, and you should,  
5 ladies and gentlemen. We embrace that burden. It's our burden  
6 to prove the defendants guilty beyond a reasonable doubt. The  
7 evidence that we've shown you in this case overwhelmingly  
8 satisfies that burden. You are also the only people who can hold  
9 these defendants to account for their crimes. No one else but  
10 you, because the evidence shows overwhelmingly that both  
11 defendants are guilty of every single count in the indictment.  
12 We ask that you return a verdict of guilty as to both defendants  
13 on all counts.

14 THE COURT: All right. Thank you.

15 MR. SALVATO: Your Honor, can we approach real briefly?

16 THE COURT: Yes, sir.

17 (Following sidebar had on the record:)

18 MR. SALVATO: Thank you, Your Honor. I don't think it was  
19 appropriate for Mr. Burke to just put up that one document about  
20 the connection between AIS and MSO in Defense Exhibit Number 12.  
21 They're clearly connected. I think that was misleading to the  
22 jury, and I think that we should be able to at least refer the  
23 jury to Defense Exhibit Number 12 as well. They're connected.  
24 You can't just put up one document when they're obviously  
25 connected and portray it to the jury that way. I wasn't going to

1 object.

2 MR. AMOLSCH: For the Court's edification, Mr. Spivey  
3 testified that he wrote the draft memo, circulated it. That's  
4 why I asked him about -- that's what Mr. Burke put up. Based on  
5 that memo, he then completed this official report for GSA, which  
6 they based it on, and so that was admitted afterwards based on  
7 the draft memo where AIS is not mentioned -- where MSO is not  
8 mentioned, but the official report to GSA is. So that report  
9 makes it clear that AIS and MSO are in this together.

10 MR. BURKE: Your Honor, first of all, I'm not sure that  
11 Mr. Lumho was ever shown that second document. Second of all,  
12 nothing that I said in closing was incorrect. And third, I mean,  
13 are we going to get into the business of me now having an  
14 opportunity to introduce documents to correct the dozens of  
15 things in Mr. Amolsch's closing that I think are improper? I  
16 think the jury should be instructed that they decide the facts.  
17 Argument of counsel is argument of counsel, but they decide the  
18 facts, but singling out this one thing is, to me, improper.

19 MR. SALVATO: That was a critical part of the whole case,  
20 the \$31 million in terms of intent. I just think it was  
21 misleading to point to one document but not the other document  
22 that clearly shows an affiliation between the two.

23 THE COURT: It's a document that was used during the  
24 trial --

25 MR. SALVATO: -- and it's in evidence --

1 THE COURT: -- and it's in evidence, and it was referenced  
2 by you in your -- in your examination.

3 MR. AMOLSCH: Yes, sir. It was Mr. -- it was Mr. Spivey,  
4 not through Mr. Lumho, but Mr. Spivey who testified about it,  
5 Mr. Spivey who wrote about it. I think -- I don't want to speak  
6 for Mr. Salvato. I think he was just saying that you should just  
7 refer them to that exhibit as well because they are connected  
8 like half -- like two sides of the same coin.

9 MR. CARLBERG: May I offer one thing on this? The Barry  
10 Atwood voicemail shows that he later -- or at least at some point  
11 knew it was MSO, so it's not misleading, and that's in front of  
12 the jury, the Barry Atwood --

13 THE COURT: I'm not going to highlight this. Your  
14 exception is noted. There were lots of representations about  
15 what exhibits did or didn't say or what people testified to or  
16 what they didn't testify to, and that was the subject of  
17 examination of at least Mr. Spivey, if not more, and the jury's  
18 heard it all, and they've been taking notes, and so I'm not going  
19 to do that. Your exception is noted.

20 I'm sorry. Stay here. So, the other alternates we had,  
21 Galindo and Hohman, are the two alternates. We're going to keep  
22 Galindo -- he's the first one in -- and let Hohman go. And I'll  
23 tell them that they're -- they can go for tonight, that the  
24 evidence will be there for them when they begin their  
25 deliberations tomorrow when they come back, and so we need to

1 make sure -- you haven't done the exhibits review. That will  
2 take --

3 MR. BURKE: We've done some of it, but not all, but we  
4 will do that this evening.

5 THE COURT: In the evening or first thing in the morning,  
6 but whatever -- whichever one you want to do. Thank you.

7 (Sidebar discussion concluded.)

8 THE COURT: I haven't tested everybody's patience. That  
9 concludes the final argument, and the case is now yours. A  
10 couple of things. Unfortunately, only 12 can deliberate. We've  
11 got 13 here, and the last alternate selected was Mr. Hohman, so  
12 Mr. Hohman, I'm going to have to ask that you not participate in  
13 the jury deliberations, and I'm sorry for that. It's really  
14 unfortunate, but the Constitution requires 12 and doesn't allow  
15 for anymore.

16 I would like you not to do anything that would disqualify  
17 you from coming back and possibly participating in the jury  
18 deliberations if something -- if there's another emergency, for  
19 instance, with another juror. And so, if you'll not do any  
20 research or investigation or not talk to anybody about the case  
21 until you get word that the jury has reached its verdict, I very  
22 much would appreciate that, sir.

23 The evidence will be brought to you -- to your jury room  
24 in the morning. I'm not going to call you down here before we  
25 begin in the morning. I would ask you to start at 9:00 tomorrow

1 morning. You need to make sure you do not begin any  
2 deliberations until all jurors are present, and if somebody  
3 leaves, you know, to go out and, you know, put money in the meter  
4 or for whatever purpose, stop deliberations until they come back.  
5 So only deliberate when all of you are present.

6 As I said, the evidence will be there for you to look at.  
7 I've got six copies of the instructions that's going to go to you  
8 so you will have the ability to pass those around and look at  
9 them carefully. We won't disturb you while you're deliberating.  
10 If you have a question, put it in writing. Mr. Jones will send  
11 it to me and we'll respond accordingly. Don't stop deliberating  
12 just because you have a question about a certain matter.  
13 Continue on, because it may take time before I can get back to  
14 you with an answer, and you can take lunch whenever you want to  
15 take lunch. Again, don't deliberate unless all of you are  
16 present. We'll have lunch brought in-between, and we'll let you  
17 do your jobs now. And thank you very much for your patience, and  
18 you're excused at this time. Thank you.

19 (Jury out at 7:14 p.m.)

20 THE COURT: All right. Anything else we need to talk  
21 about, Mr. Sears?

22 MR. SEARS: I don't know that it's something we need to  
23 talk about. I was just curious how the jurors are deliberating.  
24 Are they in a normal room or are they in a larger room?

25 THE COURT: They're in a larger room.

1 MR. SEARS: Like a courtroom.

2 THE COURT: They're in a very large conference room about  
3 50 by 30 that we have available here, and so they have room to  
4 spread out and for the exhibits.

5 MR. SEARS: Okay. I was just curious. My understanding  
6 from what the Court just instructed the jury, we do not need to  
7 come to the courtroom tomorrow morning, however we need to be  
8 within ten minutes of the courthouse. We'll probably be across  
9 the street, and we'll wait for any messages from the Court.

10 THE COURT: That's fine. That's fine.

11 MR. SEARS: Thank you, Your Honor.

12 THE COURT: And you'll be here.

13 MR. AMOLSCH: That was going to be my question, Your  
14 Honor. Do you want us to first report here or just head right  
15 over?

16 THE COURT: No, just let us -- just be available -- we'll  
17 get the phone numbers for you -- and just make sure you're  
18 available. And, of course, that goes for Mr. Lumho as well. All  
19 right.

20 So you're going to look at the evidence now before it goes  
21 back, and, as I said, we've got six copies of the jury  
22 instructions, but did we get that number 58 right on the -- who's  
23 responsible for which counts and that -- okay. All right. All  
24 right. Then we're in recess. Thank you, all.

25 (Proceedings adjourned at 7:16 p.m.)

C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Scott Wallace

6/31/21

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**Scott L. Wallace, RDR, CRR**  
**Official Court Reporter**

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**Date**